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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 34, 37, 50, 71, 73, and 140

[NRC–2018–0086]

RIN 3150–AK13

Miscellaneous Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous administrative updates and corrections. The amendments update descriptions of agency organization and functions, correct cross-reference, typographical, and grammatical errors, and add a certification recipient and clarifying language. This document is necessary to inform the public of these non-substantive amendments to the NRC's regulations.

DATES: This final rule is effective on July 30, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0086 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0086. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* There are no NRC documents referenced in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jill Shepherd-Vladimir, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1230, email: *Jill.Shepherd-Vladimir@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is amending its regulations in parts 1, 2, 34, 37, 50, 71, 73, and 140 of title 10 of the *Code of Federal Regulations* (10 CFR) to make miscellaneous updates and corrections. The amendments update branch, division, and office titles; update agency organization and functions; correct cross-reference, typographical, and grammatical errors; and add a certification recipient and clarifying language. This document is necessary to ensure orderly codification of the NRC's requirements and to inform the public of these non-substantive amendments to the NRC's regulations.

II. Summary of Changes

10 CFR Part 1

Update Organization and Functions. In § 1.34(d), this final rule removes the rulemaking function from the Office of Administration (ADM).

Update Organization and Functions. In § 1.42(a) and (b), this final rule adds the responsibility for leading, managing, and facilitating rulemaking for the agency to the Office of Nuclear Material Safety and Safeguards (NMSS).

10 CFR Part 2

Correct Reference. In § 2.101(a)(2), this final rule removes the incorrect reference to § 2.101(g) and replaces it with the correct reference to § 2.101(f) in the last sentence.

Update Branch and Office Designation. In § 2.802(b), this final rule updates the branch and office designation from the Office of Administration to the Office of Nuclear Material Safety and Safeguards.

10 CFR Part 34

Correct Reference. In § 34.101(c), this final rule removes the incorrect reference to § 30.6(a)(2) for locations of regional offices and replaces it with the correct reference to § 30.6(b)(2).

10 CFR Part 37

Include Certification Recipient. In § 37.23(b)(2), after the second sentence, this final rule adds the sentence ''Provide oath or affirmation certifications to the ATTN: Document Control Desk; Director, Office of Nuclear Material Safety and Safeguards.''

Insert Clarifying Language. In § 37.43 paragraphs (d)(2) and (3), and paragraphs (d)(5) through (8), this final rule adds the phrase ''the list of individuals that have been approved for unescorted access'' from paragraph (d)(1) to provide the full list of information required to be protected.

Correct Reference. In § 37.45(b), this final rule removes the incorrect reference to § 30.6(a)(2) and replaces it with the correct reference to § 30.6(b)(2).

10 CFR Parts 37, 71, and 73

Update Division Title. In §§ 37.77(a)(1), 71.97(c)(3)(iii), and 73.37(b)(2) this final rule updates the Office of Nuclear Material Safety and Safeguards' division title from ''Division of Material Safety, State, Tribal, and Rulemaking Programs'' to ''Division of Materials Safety, Security, State, and Tribal Programs.''

10 CFR Part 50

Correct Typographical Error. In § 50.75(e)(1)(v), this final rule removes the word ''entity(ies)'' and replaces it with the words ''entity or entities.''

10 CFR Part 73

Correct Spelling. In § 73.70(g), this final rule corrects the spelling of ''vertification'' to ''verification.''

10 CFR Part 140

Correct Grammatical Error. In § 140.2(b)(2), this final rule adds the indefinite article ''a'' before the last word in the paragraph.

Correct Reference. In § 140.3, this final rule presents the definitions in

alphabetical order, and removes the paragraph designations.

Clarifying Language. In § 140.13a(a), this final rule adds the word ''specified'' before ''in § 140.15'' in the last sentence.

Correct Typographical Error. In § 140.22, this final rule corrects the title from ''Committee'' to ''Commission'' in the last sentence.

III. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive publication in the **Federal Register** of a notice of proposed rulemaking and opportunity for comment requirements if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on these amendments, because notice and opportunity for comment is unnecessary. The amendments will have no substantive impact and are of a minor and administrative nature dealing with corrections to certain CFR sections or are related only to agency management, organization, procedure, and practice. Specifically, the revisions update branch, division, and office titles; update descriptions of agency organization and functions; correct cross-reference, typographical, and grammatical errors; and add a certification recipient and clarifying language. The Commission is exercising its authority under 5 U.S.C. 553(b)(3)(B) to publish these amendments as a final rule. The amendments are effective July 30, 2018. These amendments do not require action by any person or entity regulated by the NRC, and do not change the substantive responsibilities of any person or entity regulated by the NRC.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(2), which categorically excludes from environmental review rules that are corrective or of a minor, nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

V. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VII. Backfitting and Issue Finality

The NRC has determined that the corrections in this final rule do not constitute backfitting and are not inconsistent with any of the issue finality provisions in 10 CFR part 52. The amendments are non-substantive in nature; they update branch, division, and office titles; update descriptions of agency organization and functions; correct cross-reference, typographical, and grammatical errors; and add a certification recipient and clarifying language. They impose no new requirements and make no substantive changes to the regulations. The corrections do not involve any provisions that would impose backfits as defined in 10 CFR chapter I, or would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of the rule in final form would not constitute backfitting or represent a violation of any of the issue finality provisions in 10 CFR part 52. Therefore, the NRC has not prepared any additional documentation for this administrative rulemaking addressing backfitting or issue finality.

VIII. Congressional Review Act

This final rule is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

List of Subjects

10 CFR Part 1

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10 CFR Part 2

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10 CFR Part 50

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10 CFR Part 73

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10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974,

as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 2, 34, 37, 50, 71, 73, and 140:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Atomic Energy Act of 1954, secs. 23, 25, 29, 161, 191 (42 U.S.C. 2033, 2035, 2039, 2201, 2241); Energy Reorganization Act of 1974, secs. 201, 203, 204, 205, 209 (42 U.S.C. 5841, 5843, 5844, 5845, 5849); Administrative Procedure Act (5 U.S.C. 552, 553); Reorganization Plan No. 1 of 1980, 5 U.S.C. Appendix (Reorganization Plans).

■ 2. In § 1.34, revise paragraph (d) to read as follows:

§ 1.34 Office of Administration.

* * * * *

(d) Manages the NRC Management Directives Program and provides translation services.

■ 3. In § 1.42, revise paragraph (a), redesignate paragraphs (b)(26) through (31) as paragraphs (b)(27) through (32), and add new paragraph (b)(26) to read as follows:

§ 1.42 Office of Nuclear Material Safety and Safeguards.

(a) The Office of Nuclear Material Safety and Safeguards (NMSS) is responsible for regulating activities that provide for the safe and secure production of nuclear fuel used in commercial nuclear reactors; the safe storage, transportation, and disposal of low-level and high-level radioactive waste and spent nuclear fuel; the transportation of radioactive materials regulated under the Atomic Energy Act of 1954, as amended (the Act); and all other medical, industrial, academic, and commercial uses of radioactive isotopes. The NMSS ensures safety and security by implementing a regulatory program involving activities including licensing, inspection, assessment of environmental impacts for all nuclear material facilities and activities, assessment of licensee performance, events analysis, enforcement, and identification and resolution of generic issues. The NMSS leads, manages, and facilitates rulemaking activities for new, advanced, and operating power reactors, as well as non-power utilization facilities; nuclear materials, including production of nuclear fuel used in commercial nuclear reactors, as well as storage, transportation, and disposal of high-level radioactive waste and spent nuclear fuel, and the transportation of radioactive materials regulated by the NRC.

(b) * * *

(26) Leads, manages, and facilitates the following rulemaking activities:

(i) Develops and implements policies and procedures for the review and publication of NRC rulemakings, and ensures compliance with the Regulatory Flexibility Act and the Congressional Review Act;

(ii) Supports all technical, financial, legal, and administrative rules, including the development of regulatory analyses and the orderly codification of the NRC's regulations in chapter I of this title; and

(iii) Manages all aspects of the 10 CFR 2.802 Petition for Rulemaking process.

* * * * *

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 4. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

§ 2.101 [Amended]

■ 5. In § 2.101(a)(2), in the last sentence remove the reference ''paragraph (g)'' and add in its place the reference ''paragraph (f)''.

■ 6. In § 2.802, revise paragraph (b) introductory text to read as follows:

§ 2.802 Petition for rulemaking—requirements for filing.

* * * * *

(b) *Consultation with the NRC.* A petitioner may consult with the NRC staff before and after filing a petition for rulemaking by contacting the Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 1–800–368–5642.

* * * * *

PART 34—LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

■ 7. The authority citation for part 34 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 81, 161, 181, 182, 183, 223, 234, 274 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); 44 U.S.C. 3504 note.

§ 34.101 [Amended]

■ 8. In § 34.101(c), remove the reference ''§ 30.6(a)(2)'' and add in its place the reference ''§ 30.6(b)(2)''.

PART 37—PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

■ 9. The authority citation for part 37 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 53, 81, 103, 104, 147, 148, 149, 161, 182, 183, 223, 234, 274 (42 U.S.C. 2014, 2073, 2111, 2133, 2134, 2167, 2168, 2169, 2201, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

■ 10. In § 37.23, revise paragraph (b)(2) to read as follows:

§ 37.23 Access authorization program requirements.

* * * * *

(b) * * *

(2) Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. Provide oath or affirmation certifications to the ATTN: Document Control Desk; Director, Office of Nuclear Material Safety and Safeguards. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with § 37.25(c).

* * * * *

■ 11. In § 37.43, revise paragraphs (d)(2), (d)(3) introductory text, (d)(3)(i), (d)(5) through (7), and (d)(8)(ii) to read as follows:

§ 37.43 General security program requirements.

* * * * *

(d) * * *

(2) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

(3) Before granting an individual access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access, licensees shall:

(i) Evaluate an individual's need to know the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access; and

* * * * *

(5) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access.

(6) Licensees shall maintain a list of persons currently approved for access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access. When a licensee determines that a person no longer needs access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access, or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to obtain the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access.

(7) When not in use, the licensee shall store its security plan, implementing procedures, and the list of individuals that have been approved for unescorted access in a manner to prevent unauthorized access. Information stored in nonremovable electronic form must be password protected.

(8) * * *

(ii) The list of individuals approved for access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access.

§ 37.45 [Amended]

■ 12. In § 37.45(b) introductory text, remove the reference ''§ 30.6(a)(2)'' and add in its place the reference ''§ 30.6(b)(2)''.

§ 37.77 [Amended]

■ 13. In § 37.77(a)(1), remove the title ''Division of Material Safety, State, Tribal, and Rulemaking Programs'' and add in its place the title ''Division of Materials Safety, Security, State, and Tribal Programs''.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

§ 50.75 [Amended]

■ 15. In § 50.75(e)(1)(v), in the last sentence, remove the word ''entity(ies)'' and add in its place the words ''entity or entities''.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

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

Authority: Atomic Energy Act of 1954, secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 180 (42 U.S.C. 10175); 44 U.S.C. 3504 note.

§ 71.97 [Amended]

■ 17. In § 71.97(c)(3)(iii), remove the title ''Division of Material Safety, State, Tribal, and Rulemaking Programs'' and add in its place the title ''Division of Materials Safety, Security, State, and Tribal Programs''.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 18. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

§ 73.37 [Amended]

■ 19. In § 73.37(b)(2), remove the title ''Division of Material Safety, State, Tribal, and Rulemaking Programs'' and add in its place the title ''Division of Materials Safety, Security, State, and Tribal Programs''.

§ 73.70 [Amended]

■ 20. In § 73.70(g), in the first sentence, remove the word ''vertification'' and add in its place the word ''verification''.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 21. The authority citation for part 140 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

§ 140.2 [Amended]

■ 22. In § 140.2(b)(2), in the last sentence, add the article ''a'' before the last word ''license''.

■ 23. Revise § 140.3 to read as follows:

§ 140.3 Definitions.

As used in this part:

Act means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto.

Commission means the Nuclear Regulatory Commission or its duly authorized representatives.

Department means the Department of Energy established by the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7101 *et seq.*), to the extent that the Department, or its duly authorized representatives, exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104 (b), (c) and (d) of the Energy Reorganization Act of 1974 (Pub. L. 93–438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565 at 577–578, 42 U.S.C. 7151).

Federal agency means a Government agency such that any liability in tort based on the activities of such agency would be satisfied by funds appropriated by the Congress and paid out of the United States Treasury.

Financial protection means the ability to respond in damages for public liability and to meet the cost of investigating and defending claims and settling suits for such damages.

Government agency means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

Nuclear reactor means any apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction.

Person means:

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department, except that the Department shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Plutonium processing and fuel fabrication plant means a plant in which the following operations or activities are conducted:

(1) Operations for manufacture of reactor fuel containing plutonium, where the license or licenses authorize the possession of either five or more kilograms of plutonium, excluding that contained in sealed sources and welded or otherwise sealed unirradiated or irradiated fuel rods, at the site of the plant or authorize the processing of one or more kilograms of plutonium, excluding that contained in sealed sources and welded or otherwise sealed unirradiated or irradiated fuel rods, at the plant, including any of the following processes:

(i) Preparation of fuel material;

(ii) Formation of fuel material into desired shapes;

(iii) Application of protective cladding;

(iv) Recovery of scrap material; and

(v) Storage associated with such operations; or

(2) Research and development activities involving any of the operations described in paragraph (1) of this definition, except for research and development activities where the operator is licensed to possess or use plutonium in amounts less than those specified in paragraph (1).

Source material means source material as defined in the regulations contained in part 40 of this chapter.

Special nuclear material means:

(1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

Testing reactor means a nuclear reactor which is of a type described in § 50.21(c) of this chapter and for which an application has been filed for a license authorizing operation at:

(1) A thermal power level in excess of 10 megawatts; or

(2) A thermal power level in excess of 1 megawatt, if the reactor is to contain:

(i) A circulating loop through the core in which the applicant proposes to conduct fuel experiments; or

(ii) A liquid fuel loading; or

(iii) An experimental facility in the core in excess of 16 square inches in cross-section.

Uranium enrichment facility means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

§ 140.13a [Amended]

■ 24. In § 140.13a(a), in the last sentence, add the word ''specified'' before ''in § 140.15''.

§ 140.22 [Amended]

■ 25. In § 140.22, remove the word ''Committee'' and add in its place the word ''Commission''.

Dated at Rockville, Maryland, this 22nd day of June 2018.

For the Nuclear Regulatory Commission.

Pamela J. Shepherd-Vladimir,

Acting Chief, Regulatory Analysis and Rulemaking Support Branch, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–13877 Filed 6–27–18; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AE31

Chartering and Field of Membership

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its chartering and field of membership rules with respect to applicants for a community charter approval, expansion or conversion. The Board will allow the option for an applicant to submit a narrative to establish the existence of a well-defined local community instead of limiting the applicant to a presumptive statistical community. Also, the Board will hold a public hearing for narrative applications where the proposed community exceeds a population of 2.5 million people. Further, for communities that are subdivided into metropolitan divisions, the Board will permit an applicant to designate a portion of the area as its community without regard to division boundaries.

DATES: The final rule becomes effective September 1, 2018.

FOR FURTHER INFORMATION CONTACT: For program issues: Martha Ninichuck, Director; JeanMarie Komyathy, Deputy Director; Robert Leonard, Assistant Director; or Rita Woods, Assistant Director, Office of Credit Union Resources and Expansion (CURE), at 1775 Duke Street, Alexandria, VA 22314 or telephone (703) 518–1140. For legal issues: Marvin Shaw, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6553.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

The NCUA's Chartering and Field of Membership Manual, incorporated as Appendix B to part 701 of the NCUA regulations (''Chartering Manual''),[1]

[1] Appendix B to 12 CFR part 701(''Appendix B'').

implements the field of membership (''FOM'') requirements established by the Federal Credit Union Act (''Act'') for federal credit unions (''FCU'').[2] An FOM consists of those persons and entities eligible for membership based on an FCU's type of charter.

In adopting the Credit Union Membership Access Act of 1998 (''CUMAA''), Congress reiterated its longstanding support for credit unions, noting their ''specific mission of meeting the credit and savings needs of consumers, especially persons of modest means.''[3] As amended by CUMAA, the FCU Act provides a choice among three charter types: A single group sharing a single occupational or associational common bond;[4] a multiple common bond of groups that each have a distinct occupational or associational common bond among group members;[5] and a community common bond among ''persons or organizations within a well-defined local community, neighborhood, or rural district.''[6]

Congress has delegated to the Board broad authority in the FCU Act to define what constitutes a well-defined local community (''WDLC''), neighborhood, or rural district for purposes of ''making any determination'' regarding a community credit union,[7] and to establish applicable criteria for any such determination.[8] To qualify as a WDLC, neighborhood, or rural district, the Board requires the proposed area to have ''specific geographic boundaries,'' such as those of ''a city, township, county (single or multiple portions of a county) or their political equivalent, school districts or a clearly identifiable neighborhood.''[9] The boundaries themselves may consist of political borders, streets, rivers, railroad tracks, or other static geographical features.[10] The Board continues to emphasize that common interests or interaction among residents within those boundaries are essential features of a local community.

Until 2010, the Chartering Manual required FCUs seeking to establish an area as a WDLC to submit for NCUA approval a narrative, supported by documentation, that demonstrated indicia of common interests or interaction among residents of a proposed community (the ''narrative model'') if the community extended beyond a single political jurisdiction.[11] A WDLC is required to consist of contiguous areas, and the Chartering Manual previously included the term ''contiguous'' in its text.[12] In 2010, the Board replaced the narrative model in favor of an objective model that provided credit unions a choice between two statistically based ''presumptive communities'' that each by definition qualifies as a WDLC (the ''presumptive community model'').[13] In doing so, the Board inadvertently removed the term ''contiguous'' from the Chartering Manual, but did not intend to remove the requirement that the relevant areas be contiguous.

One kind of presumptive community is a ''Single Political Jurisdiction . . . or any contiguous portion thereof'' (''SPJ''), regardless of population.[14] The second is a single Core Based Statistical Area (''CBSA''[15]) as designated by the U.S. Census Bureau (''Census'') or a well-defined portion thereof, which under the 2010 final rule was subject to a 2.5 million population limit.[16]

Currently, in the case of a CBSA that the Office of Management and Budget (''OMB'') has subdivided into metropolitan divisions, a community consisting of a portion of the CBSA is required to conform to the boundaries of such divisions. Under either ''presumptive community'' option, an FCU was required to demonstrate that it is able to serve its entire proposed community, as demonstrated by its business and marketing plans that must accompany an application to approve a new community charter, expansion or conversion.[17]

B. 2016 Rulemakings

On October 27, 2016, the Board issued two rulemakings relating to the Chartering Manual. One was a final rule and the other a proposed rule. In the final rule,[18] the Board comprehensively amended the Chartering Manual to organize it in a more efficient framework and to maximize member access to FCU services to the extent permitted by law. The final rule permitted an applicant to utilize, in limited circumstances, a narrative approach supported by objective documentation to demonstrate that an area adjacent to a presumptive community qualifies as part of that community.

In the proposed rule, the Board proposed three additional changes to the community charter provisions.[19] Specifically, the Board proposed permitting an applicant for a community charter to submit a narrative to establish the existence of a WDLC, as an alternative to selecting a presumptive statistical community. The narrative would serve the same purpose as in years prior to 2010 when the narrative model was used exclusively. The Board also proposed increasing to 10 million the population limit on a community consisting of a statistical area or a portion thereof. In that regard, the Board requested comment on whether there should be any population limit at all for a statistical area and whether a public hearing would be appropriate for areas with large populations. Further, the Board proposed permitting an FCU to designate a portion of a statistical area as its community without regard to metropolitan division boundaries. The Board noted that consistent with its

[2] 12 U.S.C. 1759.

[3] Pub. L. 105–219, § 2, 112 Sta. 913 (Aug 7, 1998).

[4] 12 U.S.C. 1759(b)(1).

[5] *Id.* § 1759(b)(2)(A).

[6] *Id.* § 1759(b)(3).

[7] *Id.* § 1759(g)(1)(A).

[8] *Id.* § 1759(g)(1)(B).

[9] Appendix B, Ch. 2, section V.A.2.

[10] Appendix B, Ch. 2, section V.A.5.

[11] 75 FR 36257 (June 25, 2010).

[12] 68 FR 18334 (April 15, 2003) ''The well-defined local community, neighborhood, or rural district may be met if: The area to be served is multiple contiguous political jurisdictions, *i.e.,* a city, county, or their political equivalent, or any *contiguous* portion thereof and if the population of the requested well-defined area does not exceed 500,000 . . .''

[13] As explained in the final rule that discontinued the use of the narrative model, the Board ''does not believe it is beneficial to continue the practice of permitting a community charter applicant to provide a narrative statement with documentation to support the credit union's assertion that an area containing multiple political jurisdictions meets the standards for community interaction and/or common interests to qualify as a WDLC. As [the proposed rule] noted, the narrative approach is cumbersome, difficult for credit unions to fully understand, and time consuming. . . . While not every area will qualify as a WDLC under the statistical approach, NCUA stated it believes the consistency of this objective approach will enhance its chartering policy, assure the strength and viability of community charters, and greatly ease the burden for any community charter applicant.'' 75 FR 36257, 36260 (June 25, 2010).

[14] Appendix B, Ch. 2, sectionV.A.2. A Chartering Manual defines ''single political jurisdiction'' as ''a city, county, or their political equivalent, or any single portion thereof.''

[15] A CBSA is composed of the country's Metropolitan Statistical Areas and Micropolitan Statistical Areas. ''Metropolitan Statistical Areas are defined by OMB as having ''at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties.'' ''Micropolitan Statistical Areas'' are identical to Metropolitan Statistical Areas except that their urbanized areas are smaller, *i.e.,* the urbanized area contains at least 10,000 but fewer than 50,000 people. A ''Metropolitan Division'' is a subdivision of a large Metropolitan Statistical Area. Specifically, a Metropolitan Division is ''a county or group of counties within a Metropolitan Statistical Area that has a population core of at least 2.5 million. OMB Bulletin No. 15–01 (July 15, 2015)

[16] *Id.* ''A total population cap of 2.5 million is appropriate in a multiple political jurisdiction context to demonstrate cohesion in the community.'' 75 FR 36257, 36260 (June 25, 2010).

[17] Appendix B, Ch. 2, § V.A.4.

[18] 81 FR 88412 (Dec. 7 2016).

[19] 81 FR 78748 (Nov. 9, 2016).

responsibility under CUMAA to facilitate access to FCU services, the proposal sought to provide FCUs greater flexibility in that regard.

The Board received approximately 55 comments from federal and state-chartered credit unions, credit union associations, credit union leagues, banks, bank trade associations, and consultants. The majority of commenters were credit union affiliated entities, which uniformly supported the proposed rule. In contrast, the four bank-affiliated commenters uniformly opposed the proposal.

II. Federal District Court Decision

Several provisions of the 2016 final rule were challenged by the American Bankers Association. On March 29, 2018, the U.S. District Court for the District of Columbia upheld two provisions and vacated two provisions of the 2016 final rule addressing community charters.[20] Specifically, the court upheld the provision allowing an FCU to serve areas within a CBSA that do not include the CBSA's core.[21] The court also upheld the provision allowing an FCU to add an adjacent area to a presumptive community. The court vacated the provision permitting automatic characterization of any individual portion of a combined statistical area (''CSA'') as belonging to a local community as long as that portion contains no more than 2.5 million people.[22] The court also vacated the provision to increase the population limit to 1 million people for rural districts.

III. 2018 Final Rule

A. Overview

This final rule amends the community chartering provisions of the Chartering Manual. Any modification in this final rule is consistent with the District Court decision. The rule allows for the general use of the narrative model, so that an applicant can seek Board approval to form, expand, or convert to a community charter, provided that the applicant provides sufficient supporting documentation. The rule also provides that the NCUA will conduct a public hearing and solicit public comments on any community charter application that uses the narrative approach for an area whose population exceeds 2.5 million people. Further, the rule permits an FCU to designate a portion of a CBSA statistical area as its community without regard to metropolitan division boundaries.

With respect to the proposal to raise the population limit for a presumptive community, the Board has decided not to move forward with this amendment at this time.

B. General Applicability of Narrative Model To Establish a Well-Defined Local Community

In 2016, the Board proposed to allow the general use of the narrative model to form, expand, or convert to a community charter as an alternative to using the ''presumptive community'' model.[23]

In response to the proposal, nearly every credit union-affiliated commenter supported allowing the narrative model as an alternative to the presumptive community model. These commenters stated that such an alternative provides added flexibility, thus potentially allowing FCUs to provide more financial services to the public. In contrast, bank-affiliated commenters opposed this proposal, claiming that it was overly subjective. They stated that the Board's 2010 decision to replace this approach with an objective one enhanced the process because it provided greater consistency.

The Board has determined that it is appropriate to permit the narrative model as an alternative to the presumptive community model. The Board believes that a significant majority of FCUs will rely on the presumptive community model for practical reasons. The presumptive community model is less costly and requires fewer resources for an applicant to expend. Further, an applicant can rely on a streamlined process, thus ensuring a more timely determination by utilizing the presumptive community model. While most applicants will be well served by the presumptive community model, the Board believes that some FCUs will find that using the narrative model will provide a better opportunity for them to establish that the relevant area is a WDLC. As is noted above, prior to 2010, a WDLC expressly needed to be ''contiguous'' under the narrative model. Given that contiguity is still required in setting forth the parameters of a WDLC and for clarity, the Board specifically includes the contiguity requirement in the final rule's regulatory text.

Some commenters stated that certain potential communities do not necessarily align with CBSAs, SPJs, or other recognized statistical areas. The Board anticipates that this change to allow the narrative model as an alternative will be used sparingly, given the associated costs in preparing a narrative package. As noted in the section addressing the Paperwork Reduction Act (PRA), CURE estimates that there would be approximately 25 FCUs per year that would use the narrative approach based on data from the five years preceding 2010. The Board notes any such costs are not mandated by the NCUA but rather are voluntarily assumed by a potential applicant.

The Board has further determined that allowing such an alternative to the presumptive community model is appropriate because it expands the delivery of financial services to the public, particularly people from underserved communities, with no significant downside. The Board notes that the Act gives the Board broad discretion to define a WDLC for purposes of ''making *any determination*'' regarding a community credit union,[24] and to establish criteria to apply to any such determination.[25] (Emphasis added)

Under its statutory authority, the Board is adopting, with minor modifications from the proposal, a new appendix to the Chartering Manual, which sets thirteen ''Narrative Criteria to Identify a Well-Defined Local Community'' that an FCU should address in the narrative it submits to support its application to charter, expand, or convert to a community credit union. The Board has determined that establishing such criteria will facilitate an applicant's ability to provide justification to support the common interest or interaction standard. The Board notes that if an FCU has successfully established that an area is a WDLC through the narrative process, then another FCU may adopt that exact area as a WDLC without submitting a narrative of its own, provided it complies with the other requirements of the Chartering Manual including submitting a business plan that demonstrates its ability to serve the proposed FOM.

[20] *ABA* v. *NCUA,* 2018 WL 1542049, Case No. 16–2394, Mar. 29, 1018 (''FOM Decision'').

[21] A CBSA consists of an urban core, its county, and any surrounding counties that are, according to OMB, highly socially and economically integrated with the core. 81 FR at 88440.

[22] Combined Statistical Areas are composed of adjacent CBSAs that share what OMB calls ''substantial employment interchange. OMB characterizes CSAs as ''representing larger regions that reflect broader social and economic interactions, such as wholesaling, commodity distribution, and weekend recreational activities, and are likely to be of considerable interest to regional authorities and the private sector.'' OMB Bulletin No, 15–01.

[23] 81 FR at 78749.

[24] 12 U.S.C. 1759(g)(1)(A) (emphasis added).

[25] *Id.* § 1759(g)(1)(B).

Commenters generally supported the thirteen criteria. Several commenters emphasized that the NCUA should evaluate the ''totality of circumstances'' in assessing applications. These commenters stated that the criteria provided solid evidence of common interests and interaction. One commenter stated that the NCUA should allow consideration of additional criteria that are unique to a community. Another commenter stated that the NCUA should allow consideration of ''on line communities'' given the trend toward such use. Bank commenters opposed the narrative approach, but said if it is adopted, then an applicant should be required to establish compliance with, most if not all, of the thirteen criteria.

The NCUA's experience with community charter applications under the pre-2010 narrative model indicates that these thirteen criteria were generally the most useful and compelling, when properly addressed and documented, to demonstrate common interests or interaction among residents of a proposed community. An area need not meet all of the narrative criteria to qualify as a local community; rather, the totality of circumstances within the criteria a credit union elects to address must indicate a sufficient presence of common interests or interaction among the area's residents. The new appendix explains each criterion in order to guide applicants in the prudent use of their resources, with minimal burden, to assess whether an area qualifies as a local community and, if so, to develop an effective and well-documented narrative to justify Board approval of its application.[26] The Board reiterates that the proposed area does not have to match exactly the entirety of the thirteen criteria. Rather, the more a proposed area satisfies the criteria to establish a WDLC, the stronger the applicant's case. Consistent with this approach, Appendix B identifies for each of the thirteen criteria three levels of persuasiveness: ''most persuasive,'' ''persuasive,'' and ''not persuasive'' with examples of each.

Accordingly, the Board will consider the following criteria, and the supporting documentation for each, in evaluating the presence of interaction and/or common interest among residents to establish that an area is a WDLC:

1. Presence of a Central Economic Hub

The proposed community includes an economic hub. An economic hub is evident when one political jurisdiction (city or county) within a proposed local community has a relatively large percentage of the community's population or is the primary location for employment. The application needs to identify the major employers and their locations within the proposed community.

2. Community-Wide Quasi-Governmental Agency Services

The existence of organizations such as economic development commissions, regional planning boards, and labor or transportation districts can be important factors to consider. The more closely their service area matches the area, the greater the showing of common interests or interaction.

3. Governmental Designations With Community

Designation of the proposed community by a government agency as a region or distinct district—such a regional transportation district, a water district, or a tourism district—is a factor that can be considered in determining whether the area is a local community. The more closely the designation matches the area's geographic boundaries, the greater the value of that evidence in demonstrating common interests or interaction.

4. Shared Public Services and Facilities

The existence of shared services and facilities, such as police, fire protection, park districts, public transportation, airports, or public utilities, can contribute to a finding that an area is a community. The more closely the service area matches the geographic boundaries of the community, and the higher the percentage of residents throughout the community using those services or facilities, the more valuable the data.

5. Hospitals and Major Medical Facility Services

Data on medical facilities should include admittance or discharge statistics providing the ratio of use by residents of each political jurisdiction. The greater the percentage of use by residents throughout the proposed community, the higher the value of this data in showing interaction. The application can also support the importance of an area hospital with documentation that correlates the facility's target area with the proposed local community and/or discusses the relative distribution of hospitals over a larger area.

6. College and University Enrollment

College enrollment data can be a useful factor in establishing a local community. The higher the percentages of student enrollment at a given campus by residents throughout each part of the community, the greater the value in showing interaction. Additionally, the greater the participation by the college in community initiatives (*e.g.,* partnering with local governments), and the greater the service area of these initiatives, the stronger the value of this factor.

7. Multi-Jurisdictional Mutual Aid Agreements

The existence of written agreements among law enforcement and fire protection agencies in the area to provide services across multiple jurisdictions can be an important factor.

8. Organizations' and Clubs' Membership and Services

The more closely the service area of an organization or club matches the proposed community's boundaries, and the greater the percentage of membership and services throughout the proposed community, the more relevant the data.

9. Newspaper Subscriptions

A newspaper that has a substantial subscription base in an area can be an indication of common interests or interaction. The higher the household penetration figures throughout the area, the greater the value in showing common interests or interaction. Subscription data may include print copies as well as on-line access.

10. Attendance at Entertainment and Sporting Events

Data to show the percentage of residents from each political jurisdiction who attend the events. The higher the percentage of residents from throughout the proposed community, the stronger the evidence of interaction. For sporting events, as well as some entertainment events, data on season ticket holders and memberships may be available. As with overall attendance figures, the higher the percentage of residents from throughout the proposed community, the stronger the evidence of interaction.

11. Local Television and Radio Audiences

A television or radio station broadcasting in an area can be an indication of common interests or interaction. Objective data on viewer and listener audiences in the proposed

[26] Appendix 6 to Appendix B.

community can support the existence of a community.

12. Community-Wide Shopping Patterns

The narrative must identify the location of the major shopping centers and malls and include the percentage of shoppers coming from each part of the community. The larger the percentage of shoppers from throughout the community, the stronger the case for interaction. While of lesser value than the shopping data, identification of the shopping center's target area can be persuasive.

13. Geographic Isolation

Some communities face varying degrees of geographic isolation. As such, travel outside the community can be limited by mountain ranges, forests, national parks, deserts, bodies of waters, etc. This factor, and the relative degree of isolation, may help bolster a finding of common interests or interaction.

C. Public Hearing

In the November 2016 proposal, the Board requested comment about whether it should establish a process to give the public notice and an opportunity to comment on an FCU's application for approval of a statistical area with a population in excess of 2.5 million.

One bank-affiliated commenter supported having a public hearing along with the opportunity for comment for applications for community charters for statistical areas exceeding 2.5 million. No credit-union affiliated commenter addressed this issue.

The Board has determined that it is appropriate to require a public hearing along with opportunity for comment for charter applications using a narrative model over a certain population. The Board believes that such a procedure will allow applicants to present information, including their business and marketing plan, in a transparent manner. Other interested parties, including community groups, businesses, and competitors will have the opportunity to present their views. After further consideration of this issue and the comments, the Board has decided to modify the use of public hearings from what was discussed in the proposal. Specifically, the Board intends for the NCUA to conduct public hearings and solicit public comments on any narrative community application comprising an area whose population is in excess of 2.5 million people. Any public comments should be submitted to the Board at least twenty business days prior to the public hearing.

The Board intends to delegate to CURE the responsibility to conduct the public hearings on any narrative community applications in excess of 2.5 million people with assistance from the NCUA's Office of General Counsel (OGC). Upon receiving such an application, CURE will publish in the **Federal Register** information stating the location, time, procedures and other relevant information about the hearing at least 30 days prior to the hearing date. CURE will determine whether the hearing will be held at the NCUA's Headquarters in Alexandria, VA or a location near the applicant's anticipated community. The public hearing will last no more than four hours with interested parties being permitted to make presentations of no more than 30 minutes each. The applicant along with no more than seven other interested parties may request to make presentations. The first six entities that contact the NCUA in writing will be permitted to make such presentations. CURE will reserve one additional slot which it has the discretion to designate as eligible for a presentation by an interested party. In addition to the presentations, interested parties may submit written statements to CURE at least twenty business days prior to the hearing.

CURE will take under advisement the presentations and written statements and will make a determination as to whether to approve, deny, or make modifications to the application. CURE will make this determination based on whether the applicant demonstrated common interests or interactions among residents of the area under consideration, thus qualifying the area as a WDLC. CURE will make this determination no sooner than 30 days after the date of the public hearing.

D. Portion of CBSA as a Well-Defined Local Community Regardless of Internal Boundaries

In 2016, the Board proposed to permit an FCU to designate a portion of a CBSA as its community without regard to metropolitan division boundaries. The Board noted that when an FCU seeks to serve a portion of a single CBSA as its WDLC, the existing rule requires such a portion to conform to any boundary of a metropolitan divisions. In contrast, a CSA was not required to conform to any metropolitan division boundary, even though CSAs cover a wider geographic area. For purposes of consistency, the Board proposed permitting an FCU to designate a portion of a CBSA as its community without regard to division boundaries.

No commenter objected to this proposal, and approximately ten credit union-affiliated commenters specifically supported it. The commenters stated that the change would correct a disparity in treatment between a community consisting of a portion of a CBSA and a CSA. The commenters who supported it viewed it as affording regulatory relief via a common sense change to enhance consistency and provide flexibility.

The Board has determined that it is appropriate to amend the Chartering Manual to designate a portion of a CBSA as its community without regard to the boundaries of any metropolitan divisions within a CBSA.[27] This modification corrects an inconsistency that was never intended. In light of the District Court decision, the Board has removed reference to Metropolitan Divisions with respect to CSAs.

E. Eliminating the Population Limit for a Statistical Area

As noted above, the Board issued a final rule in 2010 recognizing as a presumptive community a CBSA as designated by the U.S. Census, or a CSA as designated by OMB, subject in either case to a population limit of 2.5 million and proof of the FCU's ability and commitment to serve the entire community.[28] At the time, the Board recognized a 2.5 million population ''as a logical breaking point in terms of community cohesiveness with respect to a multijurisdictional area.'' [29]

In the 2015 proposal, the Board decided to retain the existing 2.5 million population cap as the upper limit for a presumptive community, although it solicited public comment on whether to adjust the amount, and for what reasons.[30] Specifically, the Board stated that a CBSA qualifies as a WDLC only if its population does not exceed 2.5 million, and that ''[b]y design, this population limit conforms to the population parameter by which [the Office of Management and Budget (''OMB'')] recognizes metropolitan divisions within a Core Based Statistical Area.'' [31]

In their comments to the 2015 proposal, bankers opposed raising the existing population limit. For instance, a bank trade association stated that ''NCUA's overly broad interpretation of what is 'rural' or 'local' is at odds with any reasonable interpretation of those

[27] The Board is modifying Appendix B to delete reference to Metropolitan Divisions in CSAs as a result of the District Court decision.

[28] 75 FR 36257, 36260.

[29] 75 FR 36257, 36259.

[30] 80 FR at 76749.

[31] 80 FR at 76748–49.

terms and makes a mockery of the field of membership restrictions''

The 2016 final rule retained the 2.5 million population limit that applies to a community consisting of a CBSA or CSA. However, in the November 2016 proposed rule, the Board requested comment on its proposal to increase the limit to ''up to 10 million'' or to eliminate it completely. Despite affirming the then current 2.5 million population limit in that final rule, the Board stated that it anticipates that many areas that would qualify as a WDLC will experience population growth over time and that it should anticipate and accommodate inevitable growth, to the extent permissible under the Act, in order to maximize the potential membership base available to community credit unions.[32]

Comments were mixed about the proposal on the population cap for statistical areas that comprise more than a single political jurisdiction. Virtually all credit union-affiliated commenters urged the Board to eliminate the population cap on statistical areas altogether. Alternatively, they preferred the 10 million cap to the 2.5 million cap, if the Board decided to retain a population cap. In contrast, bank-affiliated commenters continued to oppose increasing the existing 2.5 million population cap on CBSAs and CSAs. The bankers argued that the proposal oversteps congressional bounds established by the Act, particularly with respect to the definition of ''local.'' Specifically, they stated that this interpretation of ''local'' would ''allow nearly any federal community credit union to serve almost any geographic area or population center.'' The bankers further stated that a 10 million population cap would allow an FCU to serve a statistical area with a population that exceeds the population of 41 states and would add 20 additional CSAs to qualify as presumptive communities. Thus, they stated that all but two CSAs would be presumptive communities. In addition, these commenters claimed that the NCUA provided ''no analysis to support this arbitrary, massive increase.''

The Board has determined that increasing the population cap for presumptive communities is not appropriate at this time. The Board is evaluating population caps for presumptive communities in light of the above-referenced District Court decision.

[32] 80 FR at 78751.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[33] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[34] Although this rule is anticipated to economically benefit FCUs that choose to charter, expand or convert to a community charter, the NCUA certifies that it will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to collections of information through which an agency creates a paperwork burden on regulated entities or the public, or modifies an existing burden.[35] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. OMB previously approved the current information collection requirements for the Chartering Manual and assigned them control number 3133–0015.

Regarding a community charter, the rule gives community charter applicants the option, in lieu of a presumptive community, to submit a narrative to establish common interests or interaction among residents of the area it proposes to serve, thus qualifying the area as a WDLC. For that purpose, the rule includes guidance in identifying compelling indicia of common interests or interaction that would be relevant in drafting a narrative summarizing how the community meets the requirements of a WDLC. In addition, when a CBSA is subdivided into Metropolitan Divisions, the rule permits a credit union to designate a portion of the area as its community without regard to division boundaries.

The NCUA has determined that the procedure for an FCU to assemble and document a narrative summarizing the evidence to support its community charter application would create a new information collection requirement. As required, the NCUA applied to OMB for approval to amend the current information collection to account for the new procedure.

[33] 5 U.S.C. 603(a).

[34] 80 FR 57512 (Sept. 24, 2015).

[35] 44 U.S.C. 3507(d); 5 CFR part 1320.

Prior to 2010, when the NCUA moved to an objective model of presumptive communities, FCUs had the following three choices for a community charter: Previously approved areas; single political jurisdictions; and multiple political jurisdictions. For applications involving multiple statistical areas, the NCUA required FCUs to submit for the NCUA approval a narrative, supported by documentation that presents indicia of common interests or interaction among residents of the proposed community.

In the five-year period preceding the move to an objective model of presumptive communities, the NCUA processed an average of twenty FOM applications involving multiple statistical areas. From 2010 to 2018, the NCUA processed 2 applicants for multiple statistical areas that exceeded 2.5 million people. Based on this historical trend, the NCUA estimates that, on average, it would take an FCU's staff approximately 160 hours to collect the evidence of common interests or interaction and to develop a narrative to support its application to expand or to convert. Accordingly, the NCUA estimates the aggregate information collection burden on existing and would-be FCUs that elect to use the narrative option to form, expand, or convert to a community charter would be 160 hours times 10 FCUs for a total of 1600 hours. The NCUA is amending the current information collection control number 3133–0015 to account for these additional burden hours.

In the proposal, the Board directed organizations and individuals who wished to submit comments on this information collection requirement to direct them to the Office of Information and Regulatory Affairs, OMB, Attn: Shagufta Ahmed, Room 10226, New Executive Office Building, Washington, DC 20503, with a copy to the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

The NCUA considered comments by the public on the proposed collection of information in:

- Evaluating whether the collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of 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).

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. Primarily because this rule applies to FCUs exclusively, it will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[36]

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 21, 2018.

Gerard Poliquin,

Secretary of the Board.

For the reasons stated above, the NCUA amends 12 CFR part 701, Appendix B, as follows:

[36] Public Law 105–277, 112 Stat. 2681 (1998).

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In appendix B to part 701, section V.A.2 of chapter 2 is revised and appendix 6 is added to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

* * * * *

Chapter 2—Field of Membership Requirements for Federal Credit Unions

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V—Community Charter Requirements

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V.A.2—Definition of Well-Defined Local Community and Rural District

In addition to the documentation requirements in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

An applicant has the burden of demonstrating to NCUA that the proposed community area meets the statutory requirements of being: (1) Well-defined, and (2) a local community or rural district.

For an applicant seeking a community charter for an area with multiple political jurisdictions with a population of 2.5 million people or more, the Office of Credit Union Resources and Expansion (CURE) shall publish a notice in the **Federal Register** seeking comment from interested parties about the proposed community and (2) conduct a public hearing about this application.

''Well-defined'' means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (single, multiple, or portions of a county) or a political equivalent, school districts, or a clearly identifiable neighborhood.

The well-defined local community requirement is met if:

• Single Political Jurisdiction—The area to be served is a recognized Single Political Jurisdiction, *i.e.,* a city, county, or their political equivalent, or any single portion thereof.

• Statistical Area—A statistical area is all or an individual portion of a Core-Based Statistical Area (CBSA) designated by the U.S. Census Bureau, including a Metropolitan Statistical Area. To meet the well-defined local community requirement, the CBSA or a portion thereof, must be contiguous and have a population of 2.5 million or less people. An individual portion of a statistical area need not conform to internal boundaries within the area, such as metropolitan division boundaries within a Core-Based Statistical Area.

• Compelling Evidence of Common Interests or Interaction—In lieu of a statistical area as defined above, this option is available when a credit union seeks to initially charter a community credit union; to expand an existing community; or to convert to a community charter. Under this option, the credit union must demonstrate that the areas in question are contiguous and further demonstrate a sufficient level of common interests or interaction among area residents to qualify the area as a local community. For that purpose, an applicant must submit for NCUA approval a narrative, supported by appropriate documentation, establishing that the area's residents meet the requirements of a local community.

To assist a credit union in developing its narrative, Appendix 6 of this Manual identifies criteria a narrative should address, and which NCUA will consider in deciding a credit union's application to: Initially charter a community credit union; to expand an existing community, including by an adjacent area addition; or to convert to a community charter. In any case, the credit union must demonstrate, through its business and marketing plans, its ability and commitment to serve the entire community for which it seeks NCUA approval.

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APPENDIX 6

NARRATIVE CRITERIA TO IDENTIFY A WELL-DEFINED LOCAL COMMUNTY

This Appendix applies when the community a federal credit union ("FCU") proposes to serve is not a "presumptive community", under either option in chapter 2, section V.A.2. of Appendix B to Part 701, and thus would not qualify as a well-defined local community ("WDLC"). In that event, this Appendix prescribes the criteria an FCU should address in the narrative it develops and submits to the Board to demonstrate that residents of the community it proposes to serve share common interests and/or interact with each other. The narrative should address the criteria below as the FCU deems appropriate, as well as any other criteria it believes are persuasive, to establish to the Board's satisfaction the presence, among residents of the proposed community, of indicia of common interests and/or interaction sufficient to qualify the area as a WDLC.

1. Central Economic Hub

The proposed community includes an economic hub. An economic hub is evident when one political jurisdiction (city or county) within a proposed local community has a relatively large percentage of the community's population or is the primary location for employment. The application needs to identify the major employers and their locations within the proposed community.

Most Persuasive	At least 25 percent of the workers living in the proposed community commute to work in the central economic hub.
Persuasive	Over 15 percent of the workers living in the proposed community commute to work in the central economic hub.
Not Persuasive	Less than 15 percent of the workers living in the proposed community commute to work in the central economic hub.

2. Quasi-Governmental Agencies

The existence of organizations such as economic development commissions, regional planning boards, and labor or transportation districts can be important factors to consider. The more closely their service area matches the area, the greater the showing of interaction and/or common interests.

Most Persuasive	The quasi-governmental agency covers the proposed community exclusively and in its entirety, derives its leadership from the area, represents collaboration that transcends traditional county boundaries, and has meaningful objectives that advance the residents' common interests in economic development and/or improving quality of life.
Persuasive	The quasi-governmental agency substantially matches the proposed community and carries out objectives that affect the relevant common interests for the entire area's residents.

Not Persuasive	The quasi-governmental agency does not match the proposed community and carries out only incidentally relevant objectives or carries out meaningful objectives in localized sections of the proposed community.

3. Governmental Designations

Designation of the proposed community by a government agency as a region or distinct district – such a regional transportation district, a water district, or a tourism district – is a factor that can be considered in determining whether the area is a local community. The more closely the designation matches the area's geographic boundaries, the greater the value of that evidence in demonstrating interaction and/or common interests.

Most Persuasive	A division of a federal or state agency specifically designates the proposed service area as its area of coverage or as a target area for specific programs.
Persuasive	A division of a federal or state agency designates a regional area that includes the coverage area, but offers special programs tailored to the common interests shared by the residents of the proposed service area.
Not Persuasive	A division of a federal or state agency designates an area as a coverage area that encompasses several local communities.

4. Shared Public Services/Facilities

The existence of shared services and facilities, such as police, fire protection, park districts, public transportation, airports, or public utilities, can contribute to a finding that an area is a community. The more closely the service area matches the geographic boundaries of the community, and the higher the percentage of residents throughout the community using those services or facilities, the more valuable the data.

Most Persuasive	Statistical evidence documents how residents from the entire proposed service area mutually benefit from a public facility. Formal agreements exist that transcend traditional county lines and provide for a common need shared by all of the residents, such as common police or fire protection.
Persuasive	Public facilities exist that cross county lines and cover the majority of the area's population, but do not cover the area in its entirety.
Not Persuasive	The applicant cites public facilities that serve areas that do not correlate with the proposed service area.

5. Hospitals and Major Medical Facilities

Data on medical facilities should include admittance or discharge statistics providing the ratio of use by residents of each political jurisdiction. The greater the percentage of use by residents throughout the proposed community, the higher the value of this data in showing interaction. The application can also support the importance of an area hospital with documentation that correlates the facility's target area with the proposed local community and/or discusses the relative distribution of hospitals over a larger area.

Most Persuasive	The applicant provides statistics demonstrating residents from throughout the proposed community use hospitals in the major population or employment center.
Persuasive	Statistical data are not available, but the application demonstrates through other documentation a medical facility is the only viable option for a significant portion of the proposed community's residents.
Not Persuasive	The area has multiple health care facilities at geographically dispersed locations with duplicative services.

6. Colleges and Universities

College enrollment data can be a useful factor in establishing a local community. The higher the percentages of student enrollment at a given campus by residents throughout each part of the community, the greater the value in showing interaction. Additionally, the greater the participation by the college in community initiatives (e.g., partnering with local governments), and the greater the service area of these initiatives, the stronger the value of this factor.

Most Persuasive	The application provides statistical data showing the institutions of higher learning cited attract significant numbers of students from throughout the proposed community.
Persuasive	The statistical data regarding where students live is either inconclusive or unavailable. However, qualitative information exists to demonstrate the institutions' relevance to the entire proposed community, such as unique educational initiatives to support economic objectives benefiting all residents and/or partnerships with local businesses or high schools.
Not Persuasive	The statistical data tends to support the institutions recruit students from a broad based area transcending the proposed community's boundaries.

7. Mutual Aid Agreements

The existence of written agreements among law enforcement and fire protection agencies in the area to provide services across multiple jurisdictions can be an important factor.

Most Persuasive	The mutual aid agreements cover the proposed community exclusively and in its entirety, represents collaboration that transcends political boundaries such as city or county limits.
Persuasive	The mutual aid agreements substantially matches the proposed community.
Not Persuasive	The mutual aid agreements do not match the proposed community.

8. Organizations and Clubs

The more closely the service area of an organization or club matches the proposed community's boundaries, and the greater the percentage of membership and services throughout the proposed community, the more relevant the data.

Most Persuasive	Statistical data supports that organizations with meaningful objectives serve the entire proposed community.
Persuasive	Other qualitative documentation exists to support that organizations with meaningful objectives serve the entire proposed community.
Not Persuasive	The applicant lists organizations that either do not cover the proposed community in its entirety or have objectives that are too limited to have a meaningful impact on the residents' common interests.

9. Community Newspaper

A newspaper that is widely read in an area can be an indication of common interests. The higher the household penetration circulation figures throughout the area, the greater the value in showing common interests. Circulation data may include print copies as well as on-line access.

Most Persuasive	Statistical evidence indicates a significant portion of residents from throughout the proposed community read the local general interest newspaper. The paper has local stories focusing on the proposed community and has a marketing target area consistent with the proposed community boundaries.
Persuasive	Local newspapers and periodicals specifically cater to the proposed community.
Not Persuasive	The area lacks a general newspaper that covers the proposed community. There are no specialized publications catering to the entire proposed community.

10. Entertainment and Sporting Events

Data to show the percentage of residents from each political jurisdiction who attend the events. The higher the percentage of residents from throughout the proposed community, the stronger the evidence of interaction. For sporting events, as well as some entertainment events, data on season ticket holders and memberships may be available. As with overall attendance figures, the higher the percentage of residents from throughout the proposed community, the stronger the evidence of interaction.

Most Persuasive	Statistical data exist to support that the venue attracts residents from throughout the proposed community.
Persuasive	Statistical evidence is not available, but other qualitative information documents the importance the venue has for the proposed community.
Not Persuasive	The applicant lists local venues without discussing where users originate from or otherwise documenting the relevance for the residents of the entire area.

11. Local Television and Radio Stations

A television or radio station broadcasting in an area can be an indication of common interests. Data on viewership or listenership in the proposed community can support the existence of a community.

Most Persuasive	Statistical evidence indicates a significant portion of residents from throughout the proposed community view or listen to the local television and radio stations. The media has local stories focusing on the proposed community and has a marketing target area consistent with the proposed community boundaries.
Persuasive	The television and radio stations provide news and sports coverage specifically catering to the proposed community.
Not Persuasive	The area lacks television or radio stations serving the proposed community.

12. Shopping

The narrative must identify the location of the major shopping centers and malls and include the percentage of shoppers coming from each part of the community. The larger the percentage of shoppers from throughout the community, the stronger the case for interaction. While of lesser value than the shopping data, identification of the shopping center's target area can be persuasive.

Most Persuasive	The application provides statistics from a reliable third party source that demonstrates the major shopping facility cited in the application is the major shopping facility for the residents of the entire area.

Persuasive	The applicant provides documentation supporting how the area's shopping facilities cluster within the area's hub and residents do not have other realistic alternatives to meet their shopping needs.
Not Persuasive	The applicant lists large shopping facilities without providing statistics or other documentation that demonstrates relevance to the proposed community.

13. Geography

Some communities face varying degrees of geographic isolation. As such, travel outside the community can be limited by mountain ranges, forests, national parks, deserts, bodies of waters, etc. This factor, and the relative degree of isolation, may help bolster a finding of interaction or common interests.

Most Persuasive	Area is geographically isolated and/or distinct from immediate surrounding area.
Persuasive	Area has geographic commonalities that influence other aspects of the residents' lives (i.e., tourism, allocation of government resources).
Not Persuasive	The area's geographic features do not appear to influence other social or economic characteristics of the area.

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BILLING CODE 7535–01–C

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 708b

RIN 3133–AE73

Bylaws; Voluntary Mergers of Federally Insured Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is revising the procedures a federally insured credit union (FICU) must follow to merge voluntarily with another FICU. The changes: Revise and clarify the contents and format of the member notice; require merging credit unions to disclose certain merger-related financial arrangements for covered persons; increase the minimum member notice period; and provide a method for members and others to submit comments to the NCUA regarding the proposed merger. In addition, the NCUA has replaced its Merger Manual with revised model forms that conform to the requirements of this rule. The regulations now includes these forms.

DATES: This rule is effective October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428 or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

In June 2017, the Board issued proposed revisions to the NCUA's voluntary merger rule.[1] The proposed rule was designed to address shortcomings in the current rule which did not always provide credit union members sufficient time to consider the merger or adequately communicate all information relevant to the merger decision.

The proposed revisions addressed the timing and contents of the notice provided to members of a merging federal credit union (FCU), provided FCU members with an opportunity to make their views known to the general membership, clarified the material that must be submitted to the NCUA for review, and revised definitions. In addition, the proposed rule reorganized the current rule to improve readability and clarity. These revisions were designed to ensure that a merging FCU's member-owners have more complete and accurate information regarding a proposed merger, including disclosure of financial arrangements that could create potential conflicts of interest. The proposal also sought comments on whether the final rule should apply to all merging FICUs rather than only to merging FCUs.

The Board is now finalizing the proposed rule, with some changes. The changes significantly narrow the definition of a ''merger-related financial arrangement'' that is subject to disclosure, adopt a less burdensome method for members to communicate their views on the merger, and apply the entire rule to all FICUs.

The Board received 84 comments on the proposed rule. Seventy of the commenters opposed the rule. Of the remaining 14 commenters, eight supported the proposed rule, four supported the proposed rule except for the member-to-member communication provision, one addressed only the question of whether the rule should apply to federally insured, state-chartered credit unions (FISCUs), and one requested an extension of the comment period.

In addition to the comments on the proposed rule, the Board has also been informed by a more thorough review of voluntary merger proposals since early 2017 (merger review). NCUA staff reviewed the member disclosure documents and ballot for every merger application submitted by an FCU, with an eye toward identifying ongoing issues. The direction of the final rule

[1] 82 FR 26605 (June 8, 2017).

reflects the experience and knowledge the NCUA has gained from the merger review process.

II. General Comments on Proposed Rule

The section-by-section summary of the final rule, below, discusses comments on specific provisions of the rule. This section explains the Board's views on general comments relating to: (1) The nature of the NCUA's authority; (2) credit union member-ownership; and (3) the state of the merger landscape for credit unions generally.

The NCUA's authority to regulate mergers: Several commenters questioned the NCUA's authority to regulate credit union mergers, or suggested that the NCUA's role is limited to safety and soundness concerns. These comments are inaccurate. The FCU Act explicitly requires the Board's ''prior written approval'' before a FICU merges with another FICU.[2] Moreover, as detailed in the preamble to the proposed rule, the FCU Act requires the Board to consider six factors in determining whether to approve FICU mergers and other types of transactions.[3] While several of the factors are safety and soundness-related, the factors also include ''the convenience and needs of the members'' and ''whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.'' [4] Clearly, the FCU Act expects the Board to consider the effect of the proposed merger on credit union members and gives the Board authority to deny mergers that do not, in its judgment, serve members well.

Need for a rule change: Many commenters considered the proposed rule unnecessary. Twenty-two commenters opined that the NCUA has sufficient authority to address any issues related to particular mergers under the current rule. Twenty-two commenters also asserted that evidence of a widespread problem with mergers was lacking. While the Board agrees that the FCU Act and current regulation provide it authority to impose requirements on specific merger transactions on a case-by-case basis,[5] it questions whether this is the best approach in the long term. Further, the merger review confirmed prior anecdotal reports that the current regulation and model forms do not encourage clear member disclosures in many situations, particularly in the area of insider benefits. The use of terminology that may not be clear to all credit union members, combined with the lack of instructions around how to disclose merger-related financial arrangements, often resulted in disclosures that obscured critical information. The Board has determined that adopting a uniform, explicit standard for disclosures, with updated regulatory language and a conforming sample form, is a more cost-effective and efficient use of agency resources than the case-by-case approach it utilized during the merger review.

Nature of Credit Union Membership: Several commenters stated that while shareholders of public companies can sell their shares of stock at any time, credit union members have no right to the net worth of a credit union except in liquidation. This assertion ignores the reality that hundreds of credit unions annually return excess net worth to members via bonus dividends or interest rebates. Further, the fact that ownership of a portion of a credit union's net worth is less negotiable than a share of stock in a public company is irrelevant at the time of a proposed merger transaction. A credit union in good condition has the option of voluntary liquidation instead of voluntary merger. In recommending a proposed merger transaction, the board of directors of a merging credit union has made the determination to transfer its net worth to the continuing credit union instead of voluntarily liquidating and disbursing the credit union's net worth to its members.

Factors contributing to mergers: A number of commenters offered thoughtful analyses about how conditions, in the credit union industry and at the NCUA, tend to favor mergers and disfavor a robust appraisal of whether the merger meets the convenience and needs of the credit union's members. Several commenters who supported the rule argued that mergers have become the NCUA's method to resolve issues such as CEO succession and worrisome financial trends. Also, two commenters opposed to the rule stated the NCUA should acknowledge that many mergers occur because the merging credit union has determined it cannot keep up with increasing and changing regulation. The Board agrees that mergers should not be the first resort when an otherwise healthy credit union faces succession issues or lack of growth. The changes implemented in the final rule, particularly to the member notice, will provide members the information they need to determine whether the merger meets their needs.

Role of Boards of Directors and the NCUA: Several commenters who supported the rule also asserted that the boards of directors of merging credit unions were failing to conduct sufficient due diligence and that the NCUA was not enforcing its rule on fiduciary duties for directors of FCUs. The merger review documented many instances where boards of merging credit unions discussed the possibility of a merger with multiple credit unions and approached the merger transaction with the best interests of their members as the highest priority. For example, one merging credit union wrote to nine different CUs, soliciting a merger partner, and conducted interviews with representatives of the credit unions that submitted the three best responses. The Board acknowledges, however, that not all boards of directors are as conscientious about fulfilling their fiduciary duties. The Board believes that this final rule, which will provide members with a more complete and understandable picture of the merger transaction, addresses these concerns. The revised member notice clearly communicates information about the merging credit union's net worth relative to the continuing credit union's net worth and whether insiders will be receiving significant payouts from that net worth. The revised member notice will also clearly convey how the proposed merger will affect access to locations and services. These changes give members greater ability to assess whether the proposed merger is in their best interests. The Board also confirms that, for merging FCUs, the NCUA's Regional Offices must ensure that boards and management have fulfilled their fiduciary duties under 12 CFR 701.4.

III. Comments on Specific Provisions of Proposed Rule and Summary of Final Rule

A. Applicability to FISCUs

In the proposed rule, the Board noted that its concerns may not be limited to mergers where the merging credit union is an FCU. The plain language of section 205 of the FCU Act provides the NCUA with authority to approve mergers for all FICUs, not only FCUs.[6] Accordingly, the Board requested specific comments on whether it should use the authority in the FCU Act to also apply the rule to merging FISCUs.[7]

[2] 12 U.S.C. 1785(b)(3).

[3] 82 FR 26605 (June 8, 2017) (citing 12 U.S.C. 1785(c)).

[4] 12 U.S.C. 1785(c).

[5] *Id.* 1785(b)(3); 12 CFR 708b.105(b).

[6] 12 U.S.C. 1785(b)(3).

[7] 82 FR 26605, 26613 (June 8, 2017).

Thirty-one of the thirty-five commenters addressing this issue thought the voluntary merger rule should not apply to merging FISCUs. These commenters argued that extending the merger rule's applicability to FISCUs was unwarranted because merger procedures are already regulated under state law and issues related to voluntary mergers do not present a safety and soundness threat.

The Board disagrees with the majority of commenters. Instead, as expressed by a minority of commenters, the Board finds that merger transactions may present safety and soundness risks which endanger the continuing credit union regardless of whether the merging credit union is an FCU or a FISCU. For example, members of a merging credit union who discover, after the fact, that they were inadequately informed about the details of the merger may become disgruntled. The dissatisfied members could create bad publicity, creating a reputation risk for the continuing credit union. Unhappy members could also choose to stop doing business with the continuing credit union, affecting earnings projections. In contrast to commenters' assertions, the statutory factors the Board must consider in granting or withholding approval of a merger transaction include several factors related to safety and soundness, such as the financial condition of the credit union,[8] the adequacy of the credit union's reserves,[9] the economic advisability of the transaction,[10] and the general character and fitness of the credit union's management.[11]

Further, several commenters also affirmed the Board's observation in the preamble to the proposed rule that the same incentives for potential conflicts of interest exist in both FISCUs and FCUs. The amended disclosure requirements of the final rule address this potential by providing credit union members with information about how the merger transaction will affect their interests. The disclosures are in keeping with the statutory factors that require the Board to consider ''the convenience and needs of the members to be served by the credit union'' [12] as well as whether the credit union conforms to its purpose ''of promoting thrift among its members and creating a source of credit for provident or productive purposes.'' [13] The Act does not limit these concerns to FCUs and FCU members.

Finally, the other regulations the Board has adopted under the authority of Section 205 apply to all FICUs rather than only FCUs. These regulations address:

FICU conversions to banks; [14]

FICU mergers with banks; [15] and

FICU mergers with credit unions not insured by the National Credit Union Share Insurance Fund (NCUSIF).[16]

Applying all portions of the merger rule to all FICUs conforms to the approach the Board has taken in these other regulations promulgated under the same authority in the FCU Act.

For the reasons above, the Board has determined to apply the final rule to all FICUs. To allow time for FISCUs to comply with the final rule, the Board has delayed the effective date until October 1, 2018. The final rule will apply only to new merger applications submitted after the rule's effective date.

B. Section 708b.2 Definitions

Covered Person

The proposed rule requires merging FCUs to disclose to members any ''merger-related financial arrangement'' provided to a ''covered person.'' As discussed in the preamble to the proposed rule,[17] the definition of ''senior management official'' in current § 708b.2 frequently resulted in FCU members having incomplete information about the benefits provided to FCU insiders as part of a merger transaction. The proposed rule amended § 708b.2 by removing the definition of ''senior management official'' and adding a definition for ''covered person.'' The term ''covered person'' means the credit union's chief executive officer or manager; the four most highly compensated employees other than the chief executive officer or manager; and any member of the board of directors or supervisory committee.

Thirty-six commenters who addressed the definition of covered person opposed it, and suggested a variety of alternatives. Six commenters did not object to the definition, and one of these commenters suggested expanding it to include family members of covered persons. In addition, two commenters agreed the definition of ''senior management official'' in the current rule was under-inclusive without offering an explicit opinion about the proposed changes.

The most common objection, stated by twenty-six commenters, was that the proposed definition of ''covered person'' would encompass all employees at smaller credit unions, when many of these employees are not in a position to influence merger discussions. This is an inaccurate characterization of many small credit unions. In the course of the merger review, the NCUA observed that all of the employees in many smaller credit unions exercised leadership or management roles and were in a position to influence merger negotiations. For example, in one credit union, an employee with the title of ''teller'' was involved in locating a merger partner and negotiating the terms of her severance payment.

Many of the objections to the definition of ''covered person'' were related to concerns with the proposed rule's expanded definition of ''merger-related financial arrangement.'' The final rule has a narrower definition of merger-related financial arrangement than the proposed rule or even the current rule, as detailed below. As a result, fewer covered persons will have arrangements that are subject to disclosure. Further, the merger review revealed very few instances where family members of covered persons received merger-related financial arrangements, so the Board does not see the need to expand the definition of covered person to include family members. Accordingly, the Board is adopting the definition of covered person as proposed.

Merger-Related Financial Arrangements

The NCUA's merger rule has required merging credit unions to disclose ''merger-related financial arrangements'' to members since 2007. ''Merger-related financial arrangements'' include any increases in compensation or benefits that exceed the greater of 15% or $10,000.[18] The proposed rule expanded the definition of ''merger-related financial arrangement'' to cover increases in compensation or benefits received by a covered person, of any amount. Compensation includes bonuses, early payout of retirement benefits, increased insurance benefits, and any other financial rewards or benefits. The proposed rule also considered any increases in the 24 months before ratification of the merger proposal, as well as any related increases occurring after the merger, as merger-related.

Thirty-seven commenters objected to the proposed expansion of the definition of merger-related financial

[8] 12 U.S.C. 1785(c)(1).

[9] *Id.* (c)(2).

[10] *Id.* (c)(3).

[11] *Id.* (c)(4).

[12] *Id.* (c)(5).

[13] *Id.* (c)(6).

[14] 12 CFR part 708a, subpart A.

[15] 12 CFR part 708a, subpart C.

[16] 12 CFR part 708b, subpart B.

[17] 82 FR 26605, 26606 (June 8, 2017).

[18] 12 CFR 708b.2.

arrangement. Twenty-three of these commenters thought that the NCUA should retain a threshold similar to or higher than that in the current rule. Fourteen commenters suggested that increases in compensation and benefits for staff transferring to continuing credit unions from merging credit unions are to be expected, because continuing credit unions are usually significantly larger than merging credit unions. A number of these commenters said disclosure should not be required in situations where an employee receives an increase as a result of transferring to the continuing credit union. Two commenters recommended disclosure of merger-related financial arrangements as an aggregate amount rather than broken out by individual recipient.

A smaller number of commenters either had no issues with the proposed definition of merger-related financial arrangement or wanted more detail in disclosures about merger-related financial arrangements. Two emphasized that all payments to management should be disclosed to members. One commenter suggested that the rule should provide for clawback of any merger-related financial arrangement not disclosed at the time of merger.

The final rule adopts a narrower definition of the term ''merger-related financial arrangement'' than proposed based on commenters' suggestions as well as experience gained from the merger review. The final definition covers fewer types of compensation than the definition in the current rule. In particular, the final rule will not require employer-provided medical insurance, retirement, and other benefits offered on a non-discriminatory basis to all employees of the continuing credit union to be disclosed as merger-related financial arrangements. All of the seven commenters who responded to the Board's question about whether such benefits should be subject to disclosure specifically requested that these types of benefits not be subject to disclosure.

The merger review provided further support for revising the definition of ''merger-related financial arrangement.'' The NCUA experienced significant difficulties in obtaining sufficient information about benefits at the continuing and merging credit unions because, in most cases, staff for the merging credit union were genuinely uninformed about the relevant details of their benefits plans at the merging and continuing credit unions. It thus seems unlikely that benefits offered to all employees of the continuing credit union would be a source of potential conflicts of interest. The merger review also confirmed the difficulties in quantifying and explaining these benefits in the member notice. Even after obtaining information on plan costs and benefits, it was often difficult to determine whether, for example, a particular health insurance plan at a continuing credit union was superior to that at a merging credit union. Potential benefits from new retirement plans are too far removed in time to accurately project what benefits, if any, might result. The Board agrees with commenters that benefits offered on a non-discriminatory basis to all employees of the continuing credit union need not be disclosed as merger-related financial arrangements for employees of the merging credit union. The definition of merger-related financial arrangement in the final rule thus excludes employer-provided medical insurance, retirement, and other benefits offered on a non-discriminatory basis to all employees of the continuing credit union.

The final rule also retains the current threshold for the value of merger-related financial arrangements in the current rule. This means that only merger-related increases that exceed the greater of $10,000 or 15% of compensation must be disclosed. As discussed in the preamble to the proposed rule, the Board believed eliminating the threshold would offer regulatory relief and promote clarity. In light of the number of comments requesting a de minimis threshold such as this, the Board has determined to retain the current rule's requirement that only increases that exceed the greater of $10,000 or 15% are subject to disclosure. Increases below this threshold are less likely to incentivize staff of merging credit unions to promote a merger that is not in members' best interests.

The proposed rule also includes any increases received in the 24 months before the merger, as well as related increases paid after the merger, in the definition of ''merger-related financial arrangement.'' Commenters objected to not having a date certain after a merger when compensation increases will not be deemed merger-related. Several commenters also stated that the NCUA should retain its ''but for'' test when considering whether an increase is merger-related and only require disclosure for increases that would not have occurred but for the merger. The Board has determined that the definition of ''merger-related financial arrangement'' in the final rule will include only increases that occurred because of, or in anticipation of, a merger (*i.e.,* the ''but for'' test).

Merging credit unions should, however, be aware that any increases occurring in the 24 months before the merger may be deemed merger-related after review of board minutes, examination reports, and other relevant information. Similarly, continuing credit unions should be on notice that compensation provided only to staff transferred from the merging credit union is likely also merger-related and should be disclosed in the member notice if it is above the threshold amounts. If the NCUA discovers that a member notice was misleading or inaccurate about the amount of merger-related financial arrangements, it may take appropriate enforcement action.

While benefits that are available to all employees of a continuing credit union are not merger-related financial arrangements under the final rule, the Board emphasizes that any benefits that apply only to certain employees must be disclosed as merger-related financial arrangements if they meet the threshold in the rule. Some examples of these types of benefits include supplemental retirement plans for high-ranking employees, additional life insurance for certain employees, and additional paid leave time. Also, the following arrangements, identified during the merger review, provide other examples of the types of benefits that must be disclosed if they exceed the threshold amount.

Life insurance and annuities: One merging credit union had reduced the value of an executive's life insurance policy when the original premiums failed to yield the desired amount. Because the value of the policy was reduced, the executive became 100% vested in the policy several years earlier than scheduled. This reduction occurred several years before the merger. Shortly before the merger, and at the request of the continuing credit union, the merging credit union made another payment to restore the life insurance policy to the original amount, but without reverting to the original vesting schedule. This is a merger-related financial arrangement because, but for the merger, the executive's life insurance would have had a lower value.

Payment for accrued leave: In many mergers, executives or staff receive payment for accrued leave. The Board recognizes that many merging credit unions permit employees to cash out accrued leave under certain circumstances. Some credit union policies give employees the option to receive payment for accrued leave at specified times like year-end, some allow payouts when employees leave

the credit union, and some policies allow both types of payments. Credit unions and their employees who have such policies often take the view that any payments for accrued leave should not be deemed merger-related financial arrangements. This is an overly narrow approach. Regardless of whether a merging credit union's policies give employees the right to cash out leave, the test is whether the payment for leave occurs earlier in time or in a greater amount because of the merger.

Bonuses: The Board is aware that the boards of directors of many merging credit unions want to recognize employees for their service to the credit union and do this by authorizing some type of payment to employees during the merger process. Some commenters and merging credit unions have argued that such payments in recognition of past service should not be deemed merger-related. In determining whether such payments must be disclosed, the NCUA will, as discussed above, apply the ''but for'' test and only require disclosure of payments that would not have occurred but for the merger.

Severance payment agreements: In several mergers, continuing credit unions executed employment agreements with employees of the merging credit union that constituted merger-related financial arrangements. Some contracts guaranteed employment for a number of months or years, with the proviso that if the employee was terminated for any reason other than for cause, the continuing credit union would pay the employee compensation for the remainder of the period. Other contracts were even more generous and promised to pay the employee compensation for the agreed-upon period even if the employee quit. Employment contracts that guarantee payment of compensation for a set period are merger-related financial arrangements if they result from the merger and meet the threshold in the definition.

The above examples are not an exhaustive list. The general rule is that any benefit that an employee from a merging credit union will receive at the continuing credit union that is greater than the threshold amount must be disclosed as a merger-related financial arrangement unless an identical benefit is offered to all employees of the continuing credit union. Also, any benefit under an existing arrangement that is triggered by a change in control provision is, by definition, a merger-related financial arrangement if it is greater than the threshold amount.

While the Board agrees with many commenters on various aspects of the subject of merger-related financial arrangements, a number of commenters made flatly erroneous comments on this topic. These include comments that: (1) Discounted the nature of member ownership and the obligations a credit union has to its member-owners; (2) made incorrect statements about disclosure requirements applicable to other entities; and (3) ignored the potential for conflicts of interest due to increases in compensation. For example, five commenters suggested that the NCUA's review of merger-related compensation alone would suffice and disclosure to members was unnecessary. Another suggested that members have no role in considering merger-related payments to employees. These comments are legally inaccurate and philosophically off-base. The net worth of a credit union belongs to its members. Payments to insiders, especially in the context of a voluntary merger where a credit union could choose to liquidate and distribute its net worth among its members, are distributions of the credit union's net worth. Accordingly, members should be informed when a significant payout occurs.

Another objection the NCUA heard frequently during the merger review was that requiring such disclosures would cause merger votes to fail. The merger review demonstrates these fears have no basis in reality. During the merger review, despite heightened scrutiny and disclosures of merger-related financial arrangements, no mergers failed for this reason.[19]

Similarly, some commenters opined that the proposed rule would subject the compensation of employees of merging credit unions to a higher level of scrutiny than employees of any other type of industry. Contrary to these assertions, even if the proposal's requirement to disclose increases in compensation related to the merger had been adopted as proposed, employees of merging credit unions are subject to far fewer disclosures about their compensation than employees of other industries. The existing rule and proposed rule only require disclosure of the amount of increases above the threshold amount. In contrast, many employees and executives in other industries are subject to disclosure of the entire amount of their compensation. Salary information for the CEO, CFO and the three other most highly compensated employees of publically-traded companies is available in filings with the Securities and Exchange Commission. Salary information for CEOs of non-profit organizations, including state-chartered credit unions, is available on Form 990 filed with the Internal Revenue Service.

Other commenters seemed unaware of the potential for conflicts of interest associated with merger-related financial arrangements. Several stated that higher salaries at the continuing credit union do not present a conflict of interest necessitating disclosure, or that such increases should only be subject to disclosure if the total amount of an employee's salary would be above what is customary for similar positions at the continuing credit union. The Board disagrees. The prospect of a significantly higher salary at the continuing credit union could be a motivating factor in an individual's choice to advocate for a merger, both internally within the credit union leadership and with members. Credit union management may well have considerable influence with members, who may look to management for trusted opinions and advice about whether the proposed merger is in the best interests of the credit union and its members. It is not unimaginable that the prospect of a significantly higher compensation package could affect an individual manager's thinking about the desirability of the merger.

The Board does not object to the fact that employees of merging credit unions may be seeking or receiving higher remuneration through a merger. The Board agrees that in many cases, employees of merging credit unions are receiving below-market pay, and some of these credit unions do not have the ability to appropriately compensate their deserving employees. During the merger review, the vast majority of mergers that included compensation increases had increases that were below the threshold amount for merger-related financial arrangements in the current and final rule. Thus, the continuing credit union was able to adjust compensation to market rates without triggering a disclosure requirement. The final rule simply requires that members be informed of significant increases, so that they understand all of the factors potentially contributing to the merger.

One commenter requested the disclosure requirement only apply to the amount of the increase, not entire compensation. The Board reiterates that, as stated in the rule text and discussed in the preamble to the proposal, and as under the current rule, only the amounts of the increases are subject to disclosure.

[19] Of the 139 mergers reviewed as of May 7, 2018, the NCUA is aware of only two that were not approved by members and those mergers had no merger-related financial arrangements.

The merger review identified many instances where a merging credit union had not disclosed all merger-related financial arrangements in their member notices. In some of these cases, credit union representatives asserted that the payment should not be deemed merger-related if the merging credit union had the ability to make this payment. The determinative factor is not whether the merging credit union could have chosen to make this payment had it remained a separate credit union. If that were the standard, many payments by a merging credit union would fall outside the definition. Rather, the relevant question is, ''Would this payment have occurred if the credit union were not merging?'' If the answer is no, then the payment is merger-related and the merging credit union must disclose it on the member notice if it exceeds the threshold amount.

Finally, during the merger review, staff identified a number of instances where merging credit unions with significant levels of merger-related financial arrangements made the required disclosures, but surrounded the disclosure of the amounts with voluminous text. Some draft disclosures, particularly those prepared by outside attorneys, seemed designed to obscure or bury the fact of the payments in the name of providing ''context'' about the need for the payments. Again, nothing in the FCU Act or the final rule prohibits payments, in any amount, to insiders of a merging credit union. The Board neither encourages nor discourages such payments, as this determination rests with the boards of the merging and continuing credit unions and the members of the merging credit union. The Board, however, is requiring that disclosures to members of the merging credit union be clear and understandable, as provided in the revised model member notice.

Record Date

The proposed rule also adds a definition of ''record date'' to clarify which FCU members are eligible to vote on a proposed merger. The NCUA received only two comments on this provision, both of which supported adding this definition. Accordingly, the definition of ''record date'' in § 708b.2 is unchanged from the proposed rule.

C. Section 708b.105 Submission of Merger Proposal to the NCUA

The proposed rule required the merging and the continuing credit unions to submit their respective board minutes to the NCUA that reference the merger during the 24 months before the boards of directors of the credit unions approved the merger plan. Twelve commenters thought this time period was excessive and suggested a shorter period, while one commenter observed that merger-related discussions might have begun earlier than two years before the merger. The merger review documented many merger-related discussions that occurred before the six- or twelve-month lookback some commenters favored. Also, while examiners review board minutes during exams, these are not, as some commenters claimed, available for the Regional Office to download when a merger package is submitted. Accordingly, the final rule adopts this requirement as proposed.

The proposed rule also added a requirement that the merging and continuing credit unions certify that there are no other merger-related financial arrangements other than those disclosed in the notice to the members of the merging credit union. The final rule adopts this requirement as proposed, with one addition. As suggested by one commenter, the final rule adds the requirement that the CEOs of both credit unions also sign the certification.

D. Section 708b.106 Approval of the Merger Proposal by Members

Timing Requirements for Member Notice

The proposed rule increased the length of the minimum notice period preceding the meeting to discuss and vote on the merger proposal. Under the current rule, a merger meeting and vote could occur as few as seven days after the merging FCU mails notice of the meeting to its members. The proposal required a merging FCU to mail notice of the meeting and vote at least 45, but no more than 90, days before the meeting. Twenty-three commenters expressed an opinion about the notice period. Sixteen of the commenters suggested a shorter notice period, although several of these commenters also agreed the current seven-day minimum was too short. Six commenters supported the proposal's timeframe or requested a longer notice period. One commenter agreed the current seven-day notice period was insufficient but did not suggest an alternative.

The Board is adopting the timing requirements for the member notice as proposed, except for FICUs seeking to terminate NCUSIF coverage. The Board agrees with commenters who noted that the process of relinquishing the charter of a functioning credit union, and determining the disposition of the merging credit union's net worth, merits allowing members sufficient time to consider the merger proposal. The value of a credit union charter is considerable even without considering the net worth of the merging credit union. Obtaining a new credit union charter is time-consuming and requires organizers to raise capital. Moreover, usually most or all of the merging credit union's net worth transfers to the continuing credit union. For these reasons, an expanded notice period is appropriate.

The Board does not agree with some commenters' concerns that the 45-day minimum notice period will create problems when a quick merger is necessary. The Board reminds these commenters that the merger rule already permits the NCUA to waive the member vote if it finds that a merging credit union is in danger of insolvency and that a merger would avoid a loss to the NCUSIF.[20] If a merging credit union's situation is severe enough to warrant a waiver of the member vote, obviously the 45-day notice requirement would not apply. For other merging credit unions, the addition of a reasonable number of days to the process will not affect the merger. OGC's merger review did not identify any mergers where changing the required notice period would have caused the merger proposal to fail. Further, once credit unions build in the increased notice period into their estimates of the timeframe required to merge, the effect on merger transactions should be minimal.

The Board is not lengthening the notice period for mergers where a FICU is proposing to terminate NCUSIF coverage by merging with a non-federally insured credit union. For terminations of NCUSIF coverage, the FCU Act specifies a notice period of at least seven days, but no more than 30 days.[21] The Board cannot adopt a regulation that would conflict with the statute and so is retaining the requirement in the current rule for a notice period of seven to 30 days for mergers that result in termination of NCUSIF coverage.

Ideally, the Board would prefer to impose requirements for providing member notice in mergers that involve termination of federal share insurance that are the same as requirements for member notices in mergers that do not include federal share insurance termination. The required statutory notice period for federal share insurance termination,[22] however, makes this

[20] 12 CFR 708b.105(b).

[21] 12 U.S.C. 1786(d)(2).

[22] *Id.*

impossible. Accordingly, the final rule retains the existing requirement that FICUs proposing to merge into a non-federally insured credit union must send their members notice at least 7 but not more than 30 days before the member vote.

In practice, however, many members of FICUs seeking to terminate NCUSIF coverage already receive a notice period that is closer to the notice period the final regulation imposes for other types of mergers. The FCU Act requires that at least 20% of members participate in the vote to terminate federal share insurance coverage.[23] Because of this participation requirement, some credit unions seeking to terminate NCUSIF coverage provide an additional, pre-notice communication to increase the likelihood of achieving the required member participation. The 7- to 30-day notice period in the FCU Act applies only once a credit union's board approves a proposal to terminate insurance coverage.[24] As the FCU Act is silent about notices before the credit union board approves an NCUSIF termination proposal, the NCUA has permitted credit unions seeking to terminate NCUSIF coverage to send an additional notice in advance of the credit union board's approval to advise members that the credit union's board will be considering the matter.[25]

Contents of Member Notice

The proposed rule also included changes to the contents of the notice members of merging credit unions receive. These changes were designed to improve the quality and readability of the information provided in the member notice. Relatively few commenters made specific observations about these provisions, and the comments were mixed. Three commenters, who were otherwise opposed to the rule, affirmatively noted they had no objections to these changes or that they improved clarity. Two commenters deemed the goal of having a short, understandable notice unrealistic. One commenter said that merging credit unions should determine what information is most relevant to their members. Several commenters worried that lengthy disclosures would make members less likely to read them.

Several commenters thought the member disclosure documents should contain more information. One requested the notice include more information about the factors the credit union's board considered in determining to merge and in selecting a merger partner. Five suggested the disclosures should include additional information about the disposition of the merging credit union's net worth. These suggestions included: (1) Requiring the merging credit union to disclose the ratio of member benefits to the merging credit union's net worth compared to the ratio of merger-related financial arrangements to the merging credit union's net worth; (2) requiring the notice to discuss the possibility of a merger dividend to members; and (3) requiring the notice to state the dollar amount of the merging credit union's net worth. Another commenter requested specific disclosures when an acquiring credit union books ''negative good will'' due to the merger, including the merging credit union's estimated book value and market value presented in terms of dollars per member. Other commenters requested that instead of requiring information about life savings and loan protection insurance, which are infrequently offered, the notice should require specific information about more common products and services.

The Board is adopting the amended disclosures mostly as proposed. The only change in the final rule is the addition of information in the member notice about the effect of the merger on ATM access. In the proposal, the Board inquired whether the required disclosures in the notice should be expanded to include items such as ATM access or fee comparisons.[26] Several commenters requested the member notice include information about any ATM access changes, as well as other suggestions. The Board believes that the amended disclosures adequately convey to members the most relevant information—how the merger will affect locations and services and how or if there will be a distribution of the merging credit union's net worth. In addition, as discussed below, the NCUA has added revised sample member notice and ballot forms that conform to the requirements in § 708b.304.

The Board also clarifies that the member notice and ballot should not be combined with other types of notices. For example, one draft member notice submitted during the merger review attempted to combine the merger notice with the Supervisory Committee audit.[27] The merger notice included a statement at the very end that the member should check their account balances as listed on an enclosed sheet, and unless they returned another document disputing the balance, the credit union's records were presumed correct. Although this procedure is the most common way credit unions conduct Supervisory Committee audits and is not problematic on its own, in this case, members who failed to read to the end of the member notice would not have realized they also needed to verify their account balances. The Board understands the appeal of consolidating information into fewer mailings, but this convenience for the credit union is outweighed by the danger that members will miss information about the proposed merger, the other issue, or both.

Member Comments on the Proposed Merger Transaction

The proposed rule included provisions to facilitate member discussions about the merger transaction. These provisions, modelled on a similar requirement in the NCUA's rule governing credit union to bank conversions, would establish procedures to allow for member-to-member (MTM) communication in advance of a member vote. The MTM communication provision was the least popular part of the proposed rule, with 45 commenters opposing it. The most common objection was that the MTM communication process would delay the merger process, make mergers more complicated and costly, or discourage them entirely. Another frequently expressed fear was that disgruntled members, employees or competitors would use the MTM communication to convey misleading or inaccurate information. Other commenters opined that the MTM would expose the merging and continuing credit unions to reputation or litigation risk, raise the costs of mergers, and that members prefer alternate methods of receiving communications from other members. Finally, a few commenters objected to the NCUA's role in overseeing the MTM communication process and disagreed with the NCUA's observation that the proportion of votes in favor of merger is lower for ballots cast in person than for ballots cast by mail and, therefore, justifies the need for additional MTM communication.

Commenters suggested a variety of alternatives to the MTM provisions of the proposed rule. Two commenters suggested the merging credit union aggregate all member comments and either distribute one communication, or share the aggregated comments at or before the special meeting. Three commenters suggested holding an extra

[23] *Id.*

[24] *Id.*

[25] 70 FR 3279, 3285 (Jan. 24, 2005).

[26] 82 FR 26605, 26610 (June 8, 2017).

[27] The Act requires an FCU's Supervisory Committee to verify member account balances at least once every two years. 12 U.S.C. 1761d.

member meeting either during the voting period or before the voting period where members can obtain information on and discuss the merger, with a summary of the meeting posted online. Two commenters suggested that the NCUA create an online posting for each merger that allows members to submit comments. Further, one commenter requested public notice at the time a merger application is filed with the NCUA.

The Board believes many of the commenters' fears about the MTM communication provision are unlikely to materialize. The MTM communication provisions were modelled after those in the NCUA's part 708a regulation on credit union conversions to banks. Since the MTM communication provisions of part 708a took effect in early 2007, there have been eleven bank conversion attempts. An MTM communication occurred in fewer than half of these attempts. As most proposed bank conversions, which have a greater effect on member rights than a merger with another credit union, do not have an MTM communication, the Board finds it unlikely that many credit union merger proposals would evoke MTM communications.

In terms of the potential for abuse, the Board reminds commenters that the proposed rule provided for the NCUA to review MTM communications that merging credit unions find inaccurate or misleading. While this process would require time and effort on the NCUA's part, the Board expects this commitment would not be major because only a small proportion of credit union mergers would involve MTM communications.

In summary, the Board believes many of the commenters' fears about the effects of the MTM communication provisions are exaggerated. Nevertheless, the Board agrees that there may be an alternative way to accomplish the Board's goal of permitting members to dialogue about the proposed merger transaction while avoiding the features that made the MTM communication objectionable to commenters. The Board requested comments about all aspects of the proposed rule, which includes the MTM communication provision. The Board is now adopting the suggestions of two commenters who requested that the NCUA provide publicly accessible information about proposed merger transactions on the NCUA's website, with a section for member comments. The final rule requires the member notice to include information about the NCUA website where merger information and member comments are posted, as well as the email and physical addresses where members may submit their comments for posting.

Other regulators regularly provide similar information on their websites about pending transactions of regulated institutions. The Office of the Comptroller of the Currency (OCC), for example, posts a weekly listing of all applications it has received and actions it has taken.[28] The actual applications for transactions such as mergers, are also posted on the OCC's website, along with a section for posting public comments.[29]

The Board intends to establish a page on the NCUA's website similar to the OCC's, allowing credit union members and the public to view non-confidential portions of merger applications. The member notice will include a link to the website where the merger application and comments will be available, as well as information about how to submit a comment. Because the purpose of the website is to encourage dialogue between credit union members, the NCUA will post comments only from credit union members, as well as any responses from credit union management. Members must include their name and their city and state of residence, at a minimum, or their comment will not be posted. The NCUA will review comments before posting to ensure that the comments are appropriate and limited to the topic of the proposed merger.

For the reasons above, the merger applications website replaces the MTM communication provisions of the proposed rule. The NCUA is in the process of developing the website, and it will be operational by the effective date of this rule.

Electronic Notification and Voting

As part of the merger review, a credit union inquired if it could supply the member notice, and conduct the member vote, electronically. The Board does not object to providing member notices and other documents electronically to members who have previously agreed to electronic notification. Nor does the Board object to providing the option to vote electronically. Credit unions using electronic means, however, must also allow members to vote by paper ballot in person or by mail and should ensure that their bylaws allow for voting by electronic means.

Return of Net Worth to Members

Several times during the merger review, credit unions inquired about the permissible methods of calculating how to return some net worth to members. In particular, some credit unions wanted to base the calculation on loan balances as well as, or in addition to, the traditional methodology of using share account balances to calculate a merger dividend. The FCU Act does not specify a particular methodology for returning net worth to members of a merging credit union. Also, the Act has general authority for loan-related rebates; credit union boards may ''authorize interest refunds to members of record at the close of business on the last day of any dividend period from income earned and received in proportion to the interest paid by them during that dividend period.'' [30] The merger regulation is also not specific, simply requiring that a merging credit union must provide an explanation of ''any provisions for reserves, undivided earnings or dividends.'' [31] Borrowers, as well as savers, contribute to building a credit union's net worth. Accordingly, the Board clarifies that the regulation does not prohibit returning a portion of net worth to members based on loan balances. The Board cautions that merging credit unions that are returning a portion of net worth based on loan balances must describe the payment accurately. Payments based on loan balances should use a term such as ''interest rebate,'' as dividends only apply to share accounts. Also, the NCUA will review benefits provided to covered persons and will require disclosure if a return of net worth occurs in an amount that exceeds the threshold for merger-related financial arrangements.

E. Forms

In the proposed rule, the NCUA committed to issue revised forms and revisions to its Merger Manual in conjunction with any final rulemaking.[32] In light of the fact that subpart C of part 708b already contains many merger-related forms, the Board has determined to eliminate a separate merger manual and incorporate all relevant forms into the rule. Having all merger-related information in the same location will ease compliance for credit unions. It will also prevent the Merger Manual and forms from falling out of conformance over time due to regulatory changes.

[28] *https://www.occ.gov/topics/licensing/corporate-activities-weekly-bulletin/index-weekly-bulletin.html.*

[29] *https://www.occ.gov/topics/licensing/public-comment/index-public-comments.html.*

[30] 12 U.S.C. 1761b(9).

[31] 12 CFR 708b.104(a)(6).

[32] 82 FR 26605, 26610 (June 8, 2017).

The final regulation now includes a new § 708b.304 that includes all of the merger-related forms for a FICU merging into another FICU. Most of the forms are substantially identical to existing forms in the merger manual. The Member Notice, however, has been significantly revised. The revisions incorporate all of the requirements of the final rule. The NCUA, is not, however, making this format mandatory and will consider other notices that provide the same level and type of information to members. Merging credit unions should be aware, however, that NCUA approval of alternate forms of member notices will require extra time, as Regional Offices will likely need to consult with the Office of General Counsel about the modified language.

III. Conforming and Clarifying Amendments to Other NCUA Regulations

Appendix A to Part 701, Federal Credit Union Bylaws

As discussed above, the Board is requiring merging credit unions to mail member notices at least 45 days, but no more than 90 days, before the meeting to vote on a proposed merger. Accordingly, the Board is proposing to amend Article IV of the FCU Bylaws to be consistent with the proposed amendments to part 708b.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis of any significant economic impact a regulation may have on a substantial number of small entities (primarily those under $100 million in assets).[33] This rule will affect relatively few small credit unions. Accordingly, the NCUA certifies that this regulation will not have a significant economic impact on a substantial number of small entities.[34]

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number.

The proposed increase in burden under § 708b.106 associated with member-to-member communications has been eliminated. NCUA will offer a website where members can post comments on proposed mergers.

NCUA believes that the certification requirement under § 708b.104 does not warrant an increase to the 5 hours already allotted a respondent to submit the merger proposal to NCUA. Similarly, the requirement to supply two years of board meeting minutes will also not add to the burden since FICUs must maintain these minutes and make them available for examiners. This also applies to § 708b.106(b) where the final rule specifies the contents of a member notice. This notice is to include the addition of the website where members can share comments and a targeted listing of branch locations of merging credit unions. This will not increase the 7 hours currently approved for a respondent to provide this notice.

In accordance with the PRA, the information collection requirements included in this final rule have been submitted to OMB for approval under control number 3133–0024. The proposed rule made revisions to the information collection requirements under OMB control number 3133–0182; but with the removal of the member-to-member communications, there is no change to the burden.

Estimated number of respondents: 214 FICU.

Estimated total annual burden hours: 7,490.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nothing in the rule precludes states from adopting more rigorous requirements. Further, the requirements for FISCUs are the same as for FCUs, and are designed to provide disclosure to members, that are similar to, or less burdensome than the requirements imposed by the SEC on state-chartered publicly-traded companies, or by the IRS on state-chartered non-profits (including many FISCUs). The NCUA has therefore determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the OMB for its determination in that regard.

List of Subjects

12 CFR Part 701

Advertising, Credit, Credit unions, Fair housing, Insurance, Reporting and recordkeeping requirements.

12 CFR Part 708b

Credit unions, Mergers of credit unions.

By the National Credit Union Administration Board, on June 21, 2018.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the National Credit Union Administration amends 12 CFR parts 701 and 708b as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Revise the first sentence of Section 2 of Article IV of appendix A to part 701 to read as follows:

Appendix A to Part 701—Federal Credit Union Bylaws

* * * * *

Article IV. Meetings of Members

* * * * *

Section 2. *Notice of meetings required.* a. The secretary must give written notice to

[33] 5 U.S.C. 603(a).

[34] *Id.* 605(a).

each member: At least 30 but no more than 75 days before the date of the annual meeting; at least 7 days before the date of any special meeting; and at least 45 but no more than 90 days before the date of any meeting to vote on a merger with another credit union. * * *

* * * * *

PART 708b—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

■ 3. The authority citation for part 708b continues to read as follows:

Authority: 12 U.S.C. 1752(7), 1766, 1785, 1786, and 1789.

■ 4. Amend § 708b.2 as follows:

■ a. Add a definition in alphabetical order for ''Covered person''.

■ b. Revise the definition of ''Merger-related financial arrangement''.

■ c. Add a definition in alphabetical order for ''Record date''.

■ d. Remove the definition for ''Senior management official''.

The revisions and additions read as follows:

§ 708b.2 Definitions.

* * * * *

Covered person means the chief executive officer or manager (or a person acting in a similar capacity); each of the four most highly compensated employees other than the chief executive officer or manager; and any member of the board of directors or the supervisory committee.

* * * * *

Merger-related financial arrangement means a material increase in compensation or benefits because of, or in anticipation of, a merger that any covered person of a merging credit union has received during the 24 months before the date the boards of directors of both credit unions approve the merger plan. It also means a material increase in compensation or benefits that any covered person of a merging credit union will receive in the future because of the merger. This includes the sum of all increases in direct and indirect compensation, such as salary, bonuses, leave, deferred compensation, early payout of retirement benefits, or any other financial rewards, other than benefits available to all employees of the continuing credit union on identical terms and conditions. A material increase is an increase in value that exceeds the greater of 15 percent of existing compensation or benefits or $10,000.

* * * * *

Record date means a date announced by the board of directors of a merging credit union as the date by which a person must have been a member of the merging credit union to be eligible to vote on a proposed merger.

* * * * *

■ 8. Amend § 708b.104 by revising paragraphs (a)(4), (5) and (8), removing the period at the end of paragraph (a)(9)(ii) and adding a semicolon in its place, and adding paragraphs (a)(10) and (11) to read as follows.

§ 708b.104 Submission of merger proposal to the NCUA.

(a) * * *

(4) Proposed Notice of Special meeting of the Members;

(5) Copy of the form of Ballot to be sent to the members;

* * * * *

(8) If the merging credit union's assets on its latest call report are equal to or greater than the threshold amount established and published in the **Federal Register** annually by the Federal Trade Commission under 15 U.S.C. 18a(a)(2)(B)(i), a statement about whether the two credit unions intend to make a Hart-Scott-Rodino Act premerger notification filing with the Federal Trade Commission and, if not, an explanation why not;

* * * * *

(10) Board minutes for the merging and continuing credit union that reference the merger for the 24 months before the date the boards of directors of both credit unions approve the merger plan; and

(11) A certification signed by the CEOs and Chairmen of the merging credit union and the continuing credit union, using the form in § 708b.304(c), that there are no merger-related financial arrangements to covered persons other than those disclosed in the notice required by paragraph (a)(4) of this section.

■ 9. Revise § 708b.106 to read as follows:

§ 708b.106 Approval of the merger proposal by members.

(a) *Advance notice of member vote.* Members of the merging credit union must receive written notice at least 45 calendar days, but no more than 90 calendar days, before any member meeting called to vote on the merger proposal.

(b) *Contents of member notice.* While the merging credit union may refer members to attachments for additional information or explanation, the notice provided to members pursuant to paragraph (a) of this section must be in the form set forth in subpart C of this part and contain the following information:

(1) A statement of the purpose of the meeting and the time and place;

(2) A statement that members may vote on the merger proposal in person or by mail ballot (or electronically, if the credit union's Bylaws so permit) received by the merging credit union no later than the date and time announced for the member meeting called to vote on the merger proposal;

(3) A statement about the availability of a website where members of the merging credit union can share comments and questions about the merger pursuant to paragraph (d) of this section;

(4) A summary of the merger plan, including but not necessarily limited to:

(i) A statement that the merging credit union does or does not have a higher net worth percentage than the continuing credit union;

(ii) A statement as to whether the members of the merging credit union will receive a share adjustment or other distribution of reserves or undivided earnings, including a summary of reasons for the decision and, at the merging credit union's discretion, a short explanation about the capital level;

(iii) An explanation of any changes to ATM access or to services such as life savings protection insurance or loan protection insurance;

(iv) If the continuing credit union is not federally insured, an explanation of any changes related to federal share insurance; and

(v) A detailed description of all merger-related financial arrangements. This description must include the recipient's name and title as well as, at a minimum, the amount or value of the merger-related financial arrangement expressed, where possible, as a dollar figure;

(5) A statement of the reasons for the proposed merger; and

(6) A statement identifying the physical locations of the merging credit union by street address, stating whether each location is to be closed or retained, and a list of branches of the continuing credit union by street address that are located in reasonable proximity to the merging credit union's locations.

(c) *Additional documents.* The notice provided to members pursuant to paragraph (a) of this section shall be accompanied by the following separate documents:

(1) The current financial statements for each credit union and a consolidated financial statement for the continuing credit union;

(2) Any additional information or explanatory material that the merging credit union wishes to provide that does not detract from the required disclosures and gives further detail to members regarding information disclosed pursuant to paragraph (b) of this section; and

(3) A Ballot for Merger Proposal.

(d) *Member information.* Within 30 calendar days of receiving the notice provided to members pursuant to paragraph (a) of this section, members may jointly or individually submit a comment about the merger to the NCUA. The NCUA will post these comments on a website accessible to credit union members.

(e) *Posting member comments.* The NCUA reserves the right to not post comments that it reasonably believes:

(1) Are false or misleading with respect to any material fact;

(2) Omit a material fact necessary to make the statement in the material not false or misleading;

(3) Relate to a personal claim or personal grievance, or solicit personal gain or business advantage by or on behalf of any party;

(4) Address any matter, including a general economic, political, racial, religious, social, or similar cause that is not related to the proposed merger;

(5) Directly or indirectly and without expressed factual foundation impugn a person's character, integrity, or reputation;

(6) Directly or indirectly and without expressed factual foundation make charges concerning improper, illegal, or immoral conduct; or

(7) Directly or indirectly and without expressed factual foundation make statements impugning the safety and soundness of the credit union.

(f) *Clear and conspicuous disclosures required.* Any information required by paragraph (b) of this section to be disclosed on the notice provided to members pursuant to paragraph (a) of this section must be legible, written in plain language, and reasonably understandable by ordinary consumers.

(g) *Approval of a proposal to merge.* Approval of a proposal to merge a federally-insured credit union into a federally-insured credit union requires the affirmative vote of a majority of the members of the merging credit union who vote on the proposal. Members must be members as of the record date to vote. If the continuing credit union is not federally insured, the requirements of subpart B of this part also apply, and the merging credit union must use the appropriate form ballot and notice in subpart C of this part unless the Regional Director approves the use of different forms. If the continuing credit union is federally insured, use of the sample form notice, ballot, and certification of vote forms in subpart C of this part will satisfy the requirements of this subpart.

■ 10. Add § 708b.304 to read as follows:

§ 708b.304 Merger of a federally-insured credit union into another federally-insured credit union.

(a) *Merger resolution for continuing credit union, NCUA 6302.* The continuing credit union's board of directors must complete this form after it votes to merge with the merging credit union. The merger package required by § 708b.104 must include merger resolutions from both the merging and continuing credit unions.

Merger Resolution (Continuing Credit Union)

Resolution

The Board of Directors believes our credit union should merge with [name of merging credit union] (merging credit union). Our credit union will assume the merging credit union's shares and liabilities. The merging credit union will transfer to our credit union all of its assets, rights, and property. All members of the merging credit union will receive shares in our credit union, which will stay in business under its present charter.

Certification

We, the Board Presiding Officer and Secretary of this credit union, are authorized to:

- Seek National Credit Union Administration Regional Director approval of the merger.
- Execute and deliver the merger agreement on the effective date of the merger.
- Execute all agreements and other papers required to complete the merger.

We certify to the National Credit Union Administration that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Directors of our credit union at a meeting held under our bylaws on [month and date], 20____. A quorum was present and voted. The resolution is duly recorded in the minutes of the meeting and is still in full force and effect.

_____
Board Presiding Officer

_____
Date

_____
Secretary

_____
Date

(b) *Merger resolution for merging credit union, NCUA 6303.* The merging credit union's board of directors must complete this form after it votes to merge with the continuing credit union. The merger package required by § 708b.104 must include merger resolutions from both the merging and continuing credit unions.

Merger Resolution (Merging Credit Union)

Resolution

The Board of Directors believes our credit union should merge with [name of continuing credit union] (continuing credit union). The continuing credit union will assume the shares and liabilities of our credit union. Our credit union will transfer to the continuing credit union all of our assets, rights, and property. All members of our credit union will receive shares in the continuing credit union, which will stay in business under its present charter.

Certification

We, the Board Presiding Officer and Secretary of this credit union, are authorized to:

- Seek National Credit Union Administration Regional Director approval of the merger.
- Execute and deliver the merger agreement on the effective date of the merger.
- Execute all agreements and other papers required to complete the merger.

We certify to the National Credit Union Administration that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Directors of our credit union at a meeting held under our bylaws on [month and day], 20____. A quorum was present and voted. The resolution is duly recorded in the minutes of the meeting and is still in full force and effect.

_____
Board Presiding Officer

_____
Date

_____
Secretary

_____
Date

(c) *Merger agreement, Form 6304.* Submit a proposed merger agreement to the NCUA with the initial merger package required by § 708b.104. Do not sign, date, or notarize the proposed agreement. At the completion of the merger, officials of the merging and continuing credit unions must sign this agreement and have it notarized. The continuing credit union should retain the original document. Send one copy of the executed form to the NCUA Regional Director (see Form NCUA 6309 in paragraph (g) of this section). The date you execute this document is the effective date of the merger.

Merger Agreement

This agreement is made and entered into on [month and day], 20____, by and between [name of continuing credit union] (continuing credit union) and [name of merging credit union] (merging credit union). The continuing credit union and the merging credit union agree to the following terms:

1. The merging credit union will transfer to the continuing credit union all of its assets, rights, and property.

2. The continuing credit union will assume and pay all liabilities of the merging credit

union. In addition, the continuing credit union will issue all members of the merging credit union the same amount of shares they currently own in the merging credit union, subject to the following share adjustments (if any):

[Name of continuing credit union] by:

_____
Board Presiding Officer

_____
Treasurer

[Name of merging credit union] by:

_____
Board Presiding Officer

_____
Treasurer

Before me a Notary Public (or other authorized officer) appeared the above named [name of Board presiding officer] and [name of Treasurer], Board Presiding Officer and Treasurer of [name of continuing credit union], who being personally known to me as (or proved by the oath of credible witnesses to be) the persons who executed the annexed instrument acknowledged the same to be their free act and deed and in their respective capacities the free act and deed of said credit union.

(SEAL)

Notary Public
My commission expires_____, 20____.
State of _____
County of _____

Before me a Notary Public (or other authorized officer) appeared the above named [name of Board Presiding Officer] and [name of Treasurer], Board Presiding Officer and Treasurer of [name of merging credit union], who being personally known to me as (or proved by the oath of credible witnesses to be) the persons who executed the annexed instrument acknowledged the same to be their free act and deed and in their respective capacities the free act and deed of said credit union.

(SEAL)

Notary Public
My commission expires_____, 20____.
State of _____
County of _____

(d) *Sample form notice to members, NCUA 6305A.* If a federally insured credit union is merging into another federally insured credit union, use of this form will meet the requirements of § 708b.106. Brackets provide instructions or indicate that the merging credit union should fill in the appropriate information, or select the appropriate option to conform the notice to the circumstances of the merger.

Notice of Meeting of the Members of [Name] Credit Union

The Board of Directors of [name of merging credit union] have called a [special] meeting of the members of this credit union at [location, address], on [month, day, year] at [time]. The purpose of this meeting is:

1. To consider and act upon a plan and proposal for merging [name of merging credit union] with and into [name of continuing credit union] (hereinafter referred to as the ''Continuing Credit Union''), whereby all assets and liabilities of the [name of merging credit union] will be merged with and into the Continuing Credit Union. All members of [name of merging credit union] will become members of the Continuing Credit Union and will be entitled to and will receive shares in the Continuing Credit Union for the shares they own in [name of merging credit union] on the effective date of the merger.

2. To ratify, confirm and approve the action of the Board of Directors in authorizing the officers of [name of merging credit union], subject to the approval of members, to do all things and to execute all agreements, documents, and other papers necessary to carry out the proposed merger.

The Board of Directors of [name of merging credit union] encourages you to attend the meeting and vote on the proposed merger. Whether or not you expect to attend the meeting, we urge you to sign, date and promptly return the enclosed ballot to vote on the proposed merger.

If you wish to submit comments about the merger to share with other members, you may submit them to the National Credit Union Administration (NCUA) at [insert email address] or [insert physical address]. The NCUA will post comments received from members on its website, along with the member's name, subject to the limitations and requirements of its regulations.

Other Information Related to the Proposed Merger:

The Board of Directors has carefully evaluated and analyzed the assets and liabilities of the credit unions and the value of shares in both credit unions. The financial statements of both credit unions, as well as the projected combined financial statement of the continuing credit union, follow as separate documents. In addition, the following information applies to the proposed merger.

Reasons for merger: The Board of Directors has concluded that the proposed merger is desirable and in the best interests of members because [insert reasons].

Net worth: The net worth of a merging credit union at the time of a merger transfers to the continuing credit union. [Name of merging credit union] [has or does not have] a higher net worth ratio than [name of continuing credit union].

Share adjustment or distribution: [Choose option A or B and delete the other.]

A: [Name of merging credit union] will not distribute a portion of its net worth to its members in the merger. The board of directors has determined a share adjustment, or other distribution of [name of merging credit union]'s net worth is unnecessary because [insert reasons].

B: [Name of merging credit union] will distribute a portion of its net worth to its members in the merger. The board of directors has determined to distribute a portion of [name of merging credit union]'s net worth as [describe method of calculating share adjustment or other provisions for reserves, undivided earnings or dividends.]

Locations of merging and continuing credit union: [Name of merging credit union]'s main office at [street address, city] will [close/remain open/remain open for____]. [If the merging credit union has branches, insert the same statement about the branch locations]. [Name of continuing credit union] has the following locations that are near [name of merging credit union]. [List address and type of location—i.e. main office, full-service branch for each non-ATM location of the continuing credit union in reasonable proximity to the locations of the merging credit unions.]

Changes to services and member benefits: [If applicable, explain any loss of services, such as increases in fees or loss of ATM access, as well as any changes to benefits such as life savings protection insurance or loan protection insurance. If inapplicable, delete entire section.]

Merger-related financial arrangements: [ ]

[If inapplicable, delete entire section.] NCUA Regulations require merging credit unions to disclose certain increases in compensation that any of the merging credit union's officials or the five most highly compensated employees have received or will receive in connection with the merger. The following individuals have received or will receive such compensation:

Name	Title	Description of increase	Amount

Please note that the proposed merger must have the approval of the majority of members who vote.

Enclosed with this Notice of Special Meeting is a Ballot for Merger Proposal. If you cannot attend the meeting, please complete the Ballot and return it to [mailing address]. To be counted, your Ballot must be received by [month, day, year] at [time of special meeting].

BY THE ORDER OF THE BOARD OF DIRECTORS:

_____
President

_____
Date

(e) *Form ballot, NCUA 6306A.*

Ballot for Merger Proposal

Name of Member:

Account Number:

Your credit union must receive this ballot by [insert date of meeting]. Please mail or bring it to:

[insert credit union address]

I have read the Notice of Special Meeting for the members of Credit Union. The meeting will be held on the above date to consider and act upon the merger proposal described in the notice. I vote on the proposal as follows (check one box):

[ ] **Approve** the proposed merger and authorize the Board of Directors to take all necessary action to accomplish the merger.

[ ] **Do not approve** the proposed merger.

Signed: _____
Member's Name

Date: _____

(f) *Form certification of vote, NCUA 6308A.* Within ten calendar days after the membership vote, the merging credit union must complete this form and mail it to the NCUA Regional Director.

Certification of Vote on Merger Proposal of the Credit Union

[Merging]

We, the undersigned officers of the [name of merging credit union], certify the completion of the following actions:

1. At a meeting on [month and day], 20____, the Board of Directors adopted a resolution approving the merger of our credit union with [name of continuing credit union] (continuing credit union).

2. Not more than 90 days or less than 45 days before the date of the vote, our members received copies of the notice of meeting and the ballot, as approved by the National Credit Union Administration.

3. The credit union arranged for a meeting of our credit union members at the time and place announced in the notice to consider and act upon the proposed merger.

4. At the meeting, the members present received an explanation of the merger proposal and any changes in products, services and locations.

5. The members of our credit union voted on of the merger as follows:

_____Number of members present at the meeting

_____Number of members present who voted in favor of the merger

_____Number of members present who voted against the merger

_____Number of additional written ballots in favor of the merger

_____Number of additional written ballots opposed to the merger

6. The action of the members at the meeting was recorded in the minutes.

This certification signed [month and day], 20____.

_____
Board Presiding Officer

_____
Secretary

(g) *Form certification of completion of merger, NCUA 6309.* Within 30 calendar days after the effective date of the merger, the continuing credit union must complete this form and mail it to the NCUA Regional Director with the documents listed on the form.

Certification of Completion of Merger

We, the undersigned officers of the above-named credit union, certify to the National Credit Union Administration as follows:

1. The merger of our credit union with [name of merging credit union] was completed as of [month day and year of the executed merger agreement], according to the terms and plan approved by this Board of Directors by a resolution adopted at the meeting held on [month day and year of board of directors meeting]. We previously provided a certified copy of the resolution to the National Credit Union Administration.

2. We completed all required steps for the merger and transferred the merging credit union's assets.

Attached to this certification are the following documents:

1. Financial reports for each credit union immediately before the completion of the merger.

2. A consolidated financial report for the continuing credit union immediately after the completion of the merger.

3. The charter of the merging federal credit union [if available].

4. The insurance certificate for the merging federally insured credit union [if available].

5. A copy of the executed merger agreement, Form NCUA 6304.

This certification signed [month and day], 20____.

_____
Board Presiding Officer

_____
Treasurer

(h) *Form calculation of PAS ratio, NCUA 6311.* The merger package required by § 708b.104 must include PAS calculations for both the merging and continuing credit unions. The Probable Asset/Share Ratio (PAS) reflects the relative worth of $1 of shares in a credit union, assuming it will be an on-going concern. The ratio is computed by dividing the net value of assets by the credit union's total shares.

ADDITIONS: Cash is valued at book less any known potential losses. Loans are valued at book net of probable estimated loan losses (ALLL). Investments are valued at book value less any known losses. However, if a long-term investment is likely to be liquidated prior to maturity, it is valued at current market value. Fixed Assets are valued at book, except when major fixed assets are not in use or are in the process of being sold. In these instances, the asset is valued at its probable market value. Other Assets are valued at the most realistic value to the credit union, usually not to exceed book value.

DEDUCTIONS: Notes Payable are valued at book. Accounts Payable are valued at book. Other Liabilities are valued at book. Contingent and/or Unrecorded Liabilities are valued at the most realistic known value. This item should include any unrecorded dividends not accrued for the accounting period. Subsidiary Ledger Differences are deducted if the credit union is likely to suffer a loss due to the problem. Other Losses include any other known losses. Do not include deficits in undivided earnings or net losses because they have already reduced assets if properly recorded.

PROBABLE ASSET/SHARE RATIO—CONTINUING CREDIT UNION

	Book Value	Market Value
ADDITIONS:		
Cash		
Loans		
Investments		
Fixed Assets		
Other Assets		
Total (A)		
DEDUCTIONS:		
Notes Payable		

PROBABLE ASSET/SHARE RATIO—CONTINUING CREDIT UNION—Continued

	Book Value	Market Value
Accounts Payable		
Other Recorded Liabilities		
Contingent and/or Unrecorded Liabilities		
Subsidiary Ledger Differences (Losses) Other Losses		
Total (B)		
Net Value of Assets (A – B)		
Total Shares		
Probable Asset/Share Ratio		

PROBABLE ASSET/SHARE RATIO—MERGING CREDIT UNION

	Book Value	Market Value
ADDITIONS:		
Cash		
Loans		
Investments		
Fixed Assets		
Other Assets		
Total (A)		
DEDUCTIONS:		
Notes Payable		
Accounts Payable		
Other Recorded Liabilities		
Contingent and/or Unrecorded Liabilities		
Subsidiary Ledger Differences (Losses) Other Losses		
Total (B)		
Net Value of Assets (A – B)		
Total Shares		
Probable Asset/Share Ratio		

(i) *Certification of no non-disclosed merger-related financial arrangements.* The merger package required by § 708b.104 must include the following certification.

Certification of No Non-Disclosed Merger-Related Financial Arrangements

We, the undersigned officials of [name of merging credit union] and [name of continuing credit union], certify to the National Credit Union Administration (NCUA) as follows:

1. The information provided to the NCUA in the merger application, and the proposed disclosure to the members of [name of merging credit union] includes a complete, true and accurate statement about all merger-related financial arrangements, if any, provided to covered persons, as those terms are defined in Part 708b of the NCUA's regulations.

2. We understand that we have an affirmative duty to revise our merger application and the notice to the members of [name of merging credit union] if merger-related financial arrangements are added or increased after our application is submitted.

This certification signed [month and day], 20____.

[name of continuing credit union]

_____

Board Presiding Officer

_____

CEO

[name of merging credit union]

_____

Board Presiding Officer

_____

CEO

[FR Doc. 2018–13867 Filed 6–27–18; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2018–0605; Special Conditions No. 25–730–SC]

Special Conditions: Airbus Model A318, A319, A320 and A321 Series Airplanes; Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Model A318, A319, A320 and A321 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is airplane electronic systems and networks that allow access from external sources (*e.g.,* wireless devices, internet connectivity) to the airplane's internal electronic components.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus on June 28, 2018. Send comments on or before August 13, 2018.

ADDRESSES: Send comments identified by Docket No. FAA–2018–0605 using any of the following methods:

- *Federal eRegulations 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: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

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 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: Varun Khanna, Airplane and Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3159; email *Varun.Khanna@faa.gov.*

SUPPLEMENTARY INFORMATION:

The substance of these special conditions previously has been published in the **Federal Register** for public comment. These special conditions have been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On February 2, 2017, Airbus applied for a change to Type Certificate No. A28NM for the installation of electronic network system architecture or Flight Operations and Maintenance Exchanger (FOMAX) equipment in the Model A318, A319, A320 and A321 series airplanes. The Airbus Model A318, A319, A320 and A321 series airplanes are twin-engine, transport category airplanes with a passenger seating capacity of 136 to 230 and a maximum takeoff weight of 123,458 to 213,848 pounds, depending on the specific design.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Model A318, A319, A320 and A321 series airplanes as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A28NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A318, A319, A320 and A321 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A318, A319, A320 and A321 series airplanes must comply with the fuel vent and exhaust-emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Airbus Model A318, A319, A320 and A321 series airplanes will incorporate the following novel or unusual design feature:

The installation and activation of electronic network system architecture or Flight Operations and Maintenance Exchanger (FOMAX) equipment that allows access from external sources (*e.g.,* wireless devices, internet connectivity) to the airplane's internal electronic components.

Discussion

The Airbus Model A318, A319, A320 and A321 series airplane architecture and network configuration may allow increased connectivity to and access from external network sources and airline operations and maintenance networks to the aircraft control domain and airline information services domain. The aircraft control domain and airline information services domain perform functions required for the safe operation and maintenance of the airplane. Previously these domains had very limited connectivity with external network sources. The architecture and network configuration may allow the exploitation of network security vulnerabilities resulting in intentional or unintentional destruction, disruption, degradation, or exploitation of data, systems, and networks critical to the safety and maintenance of the airplane.

The existing regulations and guidance material did not anticipate these types of airplane system architectures. Furthermore, 14 CFR regulations and the current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks, data buses, and servers. Therefore, these special conditions are to ensure that the security (*i.e.,* confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized

wired or wireless electronic connections.

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

Applicability

As discussed above, these special conditions are applicable to the Model A318, A319, A320 and A321 series airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on Airbus Model A318, A319, A320 and A321 series airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A318, A319, A320 and A321 series airplanes.

1. The applicant must ensure that the airplane electronic systems are protected from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system-security threats are identified and assessed, and that effective electronic system-security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the aircraft is maintained, including all post-type-certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Des Moines, Washington, on June 25, 2018.

Victor Wicklund,

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

[FR Doc. 2018–13949 Filed 6–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2018–0602; Special Conditions No. 25–729–SC]

Special Conditions: Airbus Model A318, A319, A320 and A321 Series Airplanes; Electronic System Security Protection From Unauthorized Internal Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Model A318, A319, A320 and A321 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is airplane electronic systems and networks that allow access, from aircraft internal sources (*e.g.,* wireless devices, internet connectivity), to the airplane's previously isolated, internal, electronic components. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus on June 28, 2018. Send comments on or before August 13, 2018.

ADDRESSES: Send comments identified by Docket No. FAA–2018–0602 using any of the following methods:

- *Federal eRegulations 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: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

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 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: Varun Khanna, Airplane and Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3159; email *Varun.Khanna@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions previously has been published in the **Federal Register** for public comment. These special conditions have been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On February 2, 2017, Airbus applied for a change to Type Certificate No. A28NM for the installation of electronic network system architecture or Flight Operations and Maintenance Exchanger (FOMAX) equipment in the Model A318, A319, A320 and A321 series airplanes. The Airbus Model A318, A319, A320 and A321 series airplanes are twin-engine, transport category airplanes with a passenger seating capacity of 136 to 230 and a maximum takeoff weight of 123,458 to 213,848 pounds, depending on the specific design.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Model A318, A319, A320 and A321 series airplanes as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A28NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A318, A319, A320 and A321 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16

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

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A318, A319, A320 and A321 series airplanes must comply with the fuel vent and exhaust-emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Airbus Model A318, A319, A320 and A321 series airplanes will incorporate the following novel or unusual design feature:

The installation and activation of electronic network system architecture or Flight Operations and Maintenance Exchanger (FOMAX) equipment that allows access from internal sources (*e.g.,* wireless devices, internet connectivity) to the airplane's once isolated internal electronic components.

Discussion

The Airbus Model A318, A319, A320 and A321 series airplanes architecture is novel or unusual for commercial transport airplanes because it allows connection to previously isolated data networks connected to systems that perform functions required for the safe operation of the airplane. This data network and design integration may result in security vulnerabilities from intentional or unintentional corruption of data and systems critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate this type of system architecture or electronic access to aircraft systems. Furthermore, 14 CFR regulations and the current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks and servers. Therefore, these special conditions are to ensure that the security of airplane systems and networks is not compromised by unauthorized wired or wireless internal access.

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

Applicability

As discussed above, these special conditions are applicable to the Model A318, A319, A320 and A321 series airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on Airbus Model A318, A319, A320 and A321 series airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A318, A319, A320 and A321 series airplanes.

1. The applicant must ensure that the design provides isolation from, or airplane electronic system security protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, or other assets required for safe flight and operations.

2. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the aircraft is maintained, including all post type certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Des Moines, Washington, on June 25, 2018.

Victor Wicklund,

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

[FR Doc. 2018–13948 Filed 6–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No.: FAA–2017–0879]

RIN 2120–AA65

Criteria and Process for the Cancellation of Standard Instrument Approach Procedures as Part of the National Procedures Assessment (NPA)

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

ACTION: Statement of policy.

SUMMARY: The Federal Aviation Administration (FAA) is finalizing specific criteria to guide the identification and selection of appropriate circling procedures that can be considered for cancellation. These procedures include certain circling procedures (to include circling-only instrument approach procedures (IAPs) and circling minima charted on straight-in IAPs). The circling procedures associated with this cancellation initiative will be selected based on the criteria outlined in this statement of policy. This document is not a part of the FAA's VOR minimum operating network (MON) initiative.

DATES: This statement of policy is effective July 30, 2018.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this statement of policy, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lonnie Everhart, Aeronautical Information Services, AJV–5, Federal Aviation Administration, Air Traffic Organization, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169; Telephone (405) 954–4576; Email *AMC-ATO-IFP-Cancellations@faa.gov*.

SUPPLEMENTARY INFORMATION:

I. Authority for This Rulemaking

Under 49 U.S.C. 40103(a), the Administrator has broad authority to regulate the safe and efficient use of the navigable airspace. The Administrator is also authorized to issue air traffic rules and regulations to govern the flight, navigation, protection, and identification of aircraft for the protections of persons and property on the ground and for the efficient use of the navigable airspace. 49 U.S.C. 40103(b). Under section 44701(a)(5), the Administrator promotes safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. This action is within the scope of that authority.

SIAPs are promulgated by rulemaking procedures and are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 into Title 14 of the Code of Federal Regulations; Part 97 (14 CFR part 97), Subpart C—TERPS Procedures.

II. Background

The National Airspace System (NAS) is currently in transition to a ''NextGen NAS.'' During this transition, the FAA is managing the technology and procedures to support both the legacy (NavAid-based) NAS as well as the NextGen (satellite-based) NAS. As new technology has facilitated the introduction of area navigation (RNAV) instrument approach procedures over the past decade, the number of procedures available in the NAS has nearly doubled. The complexity and cost to the FAA of maintaining the instrument flight procedures inventory while expanding the new RNAV capability is not sustainable. Managing two versions of the NAS requires excess manpower, infrastructure, and information management which is costly and unsupportable in the long-term. To mitigate these costs, the FAA has a number of efforts underway to effectively transition from the legacy to the NextGen NAS. One area of focus for this transition is instrument flight procedures (IFPs). The FAA seeks to ensure an effective transition from ground-based IFPs to greater availability and use of satellite-based IFPs while maintaining NAS safety.

In early 2015, the FAA requested the RTCA's Tactical Operations Committee (TOC) [1] with providing recommendations on criteria and processes for cancelling instrument flight procedures. Among the many recommendations provided by the TOC were criteria to identify circling procedures that would qualify as candidates for cancellation. As of March 29, 2018, there are 12,068 IAPs in publication, consisting of 33,825 lines of minima, 11,701 of which are circling lines of minima. This represents a nearly 9 percent increase in IAP lines of minima from September 18, 2014. Circling procedures account for approximately one-third of all lines of minima for IAPs in the NAS.

In response to the unsustainable growth in the number of IFPs, the FAA requested feedback and recommendations from the RTCA TOC related to removing underutilized or unneeded IFPs to facilitate a transition to NextGen and reduce FAA maintenance costs related to IFPs. The task group assigned to study IFP reduction adopted the following guiding principles when considering their recommendations:

- Utilization was determined not to be a valid stand-alone criterion, as usage data can be inaccurate or unavailable in some cases and does not necessarily reflect the operational value of an IFP.
- Effort was focused on a NAS-level examination of public procedures maintained by the FAA. Additionally, specific criteria for special operating conditions, such as those in Alaska, where additional considerations may be required, should be developed apart from this effort.
- The FAA procedure reduction program is highly dependent upon and interwoven with other efforts such as VOR Minimum Operating Network (MON), the Performance Based Navigation (PBN) NAS Navigation Strategy effort and the ongoing rewrite of the Regional Airspace Procedures Team (RAPT) Order, and these efforts need to be synchronized as each effort progresses.
- Airways were deemed to be beyond the focus of this group's effort.
- When evaluating any procedure, air traffic personnel and operators should be involved.

Proposed Criteria

In its continued effort to right-size the NAS through optimization and elimination of redundant and unnecessary IAPs, on October 6, 2017, the FAA published a proposed policy and request for comment that identified the following criteria to guide the identification and selection of appropriate circling procedures to be considered for cancellation. 82 FR 46738.

The FAA proposed that all circling procedures will continue to be reviewed through the established IAP periodic review process.[2] As part of that review process, the FAA proposed that each circling procedure be evaluated against the following questions:

- Is this procedure a designated MON airport procedure?
- If multiple IAPs serve a single runway end, is this the lowest circling minima for that runway?

Note: If the RNAV circling minima is not the lowest, but is within 50' of the lowest, the FAA would give the RNAV preference.

- Would cancellation result in removal of circling minima from all conventional NAVAID procedures at an airport?

Note: If circling minima exists for multiple Conventional NAVAID procedures, preference would be to retain ILS circling minima.

- Would cancellation result in all circling minima being removed from all airports within 20 NM?

[1] The TOC is a subcommittee comprised of FAA and industry representatives established under the RTCA advisory committee in accordance with the provisions of the Federal Advisory Committee Act (FACA).

[2] Section 2–8 of FAA Order 8260.19 (Flight Procedures and Airspace) sets forth the minimum frequency of review of instrument procedures.

• Will removal eliminate lowest landing minima to an individual runway?

The following questions are applicable only to circling-only procedures:

• Does this circling-only procedure exist because of high terrain or an obstacle that makes a straight-in procedure unfeasible or which would result in the straight-in minimums being higher than the circling minima?

• Is this circling-only procedure (1) at an airport where not all runway ends have a straight-in IAP, and (2) does it have a Final Approach Course not aligned within 45 degrees of a runway which has a straight-in IAP?

The FAA proposed that further consideration for cancellation under this policy would be terminated if any of the aforementioned questions are answered in the affirmative. If all questions are answered in the negative, the procedure would be processed as described in the following paragraph.

When a candidate has been identified, Aeronautical Information Services would send a notification of procedure cancellation memorandum and completed checklist to the appropriate Regional Service Area, Operations Support Group.[3] The Regional Service Area, Operations Support Group would follow the same notification process used for standard IFP requests.[4] Consistent with FAA procedures outlined in the procedure cancellation memorandum, comments regarding the aforementioned circling procedure would need to be submitted within 30 days of the timestamp on the communication media through which it was delivered. Comments would be directed to the Regional Service Area, Operations Support Group for dissemination to Aeronautical Information Services. Comments would be adjudicated by Aeronautical Information Services within 30 days of the timestamp on the communication media through which it was received. A final decision would be forwarded to Regional Service Area, Operations Support Group to disseminate to commenter(s). The cancellation of the part 97 instrument procedure will be published in the **Federal Register**.

In its proposed policy, the FAA noted that National Procedures Assessment (NPA) Instrument Flight Procedure (IFP) cancellation activities and associated criteria do not supersede similar activities being performed under the FAA's VOR MON Program. See 81 FR 48694 (July 26, 2016). However, NPA IFP cancellation activities have been coordinated with the FAA office responsible for the VOR MON implementation program, and its input has been thoroughly considered.

III. Discussion of Comments Received

The FAA received 11 comments pertaining to the proposed statement of policy. Commenters included the Aircraft Owners and Pilots Association (AOPA), National Business Aviation Association (NBAA), and nine individuals.

AOPA suggested adding language to the proposed policy to point out the cancellation criteria's consideration of circling procedures being required for pilot training and testing. AOPA expressed concern that flight procedures critical to part 142 training centers could be cancelled without the awareness of these training centers, and requested coordination with the National Simulator Program (and simulator operators) before any IFPs are cancelled to prevent adversely hindering simulator training and testing. AOPA also requested the FAA implement outreach recommendations made in the March 2016 RTCA NPA Report ''Process and Criteria for Cancellation of Instrument Flight Procedures'' [5] to ensure users and air traffic control are able to provide input prior to IFP cancellation decisions being made.

Language has been added to one of the questions used to evaluate each circling procedure expressing awareness of the need to retain sufficient circling procedures to allow for instrument flight proficiency and training. That criterion now states, ''Would cancellation result in all circling minima being removed from all airports within 20 NM?'' This particular criteria recognizes the circling-related content of the Instrument Rating—Airplane Airman Certification Standards (ACS). Once a circling procedure is proposed for cancellation, it will be posted on the Instrument Flight Procedures Information Gateway (*https://www.faa.gov/air_traffic/flight_info/aeronav/procedures/*). This information will be provided to the National Simulator Program, Air Traffic Services, and the Operations Support Groups. This notification will enable them to maintain awareness of IFP-related actions, including proposed cancellations for circling procedures, and communicate this site's availability to their stakeholders for their awareness. Additionally, language has been added to the statement of policy that informs users how to access the FAA's Instrument Flight Procedures Information Gateway (IFP Gateway), through which they can be notified when there are proposed actions to instrument flight procedures at airports of their choosing. Users will be able to submit comments pertaining to proposed circling flight procedure cancellations, and each comment will be taken into consideration before a final determination is made.

NBAA requested the proposed policy be temporarily suspended while Flight Management Systems (FMS) issues that resulted in a number of IFPs being inadvertently eliminated from FMS IFP databases could be evaluated and considered with respect to the proposed policy.

The inadvertent removal of IFPs from certain FMS was unrelated to any action by the FAA with regard to IFP process. The NBAA's suggestion that the effective date of this policy be temporarily suspended or delayed while these FMS issues are addressed is not practical considering these criteria have been discussed, vetted via the RTCA TOC, in which NBAA has been a participant, and finally published in the 2016 RTCA Final NPA Report. Additionally, any circling procedure cancellations that result from implementation of this policy should not impact the probability of future FMS issues as mentioned in the NBAA's comment.

One commenter expressed approval of the cancellation of a circling procedure only if all runways accessible by the procedure have a straight-in IAP with lower minimums than those associated with the cancelled procedure. The individual also expressed the need for some circling procedures to remain in the NAS given the tasks and maneuvers of the Instrument Rating—Airplane Airman Certification Standards (ACS).

The FAA's policy is not intended to ensure straight-in IAPs for every runway end, but rather minimizing IFP redundancy in the NAS. The FAA acknowledges that with the cancellation of some circling procedures, there may be reduced airport accessibility, but no reduction in runway availability. To the extent that the commenter expressed concern over the ACS, the criteria the FAA is finalizing takes into account circling procedures in the ACS. The fourth criteria, which asks whether

[3] The FAA has placed sample copies of the memorandum and checklist into the docket for this document.

[4] FAA Order 8260.43 (Flight Procedures Management Program) and FAA Order 8260.26 (Establishing Submission Cutoff Dates for Civil Instrument Procedures) contain additional information on this process. These orders are available on the FAA website.

[5] A copy of this report has been placed in the docket for this action.

cancellation will result in all circling minima being removed from all airports within 20 NMs, should ensure that there are sufficient circling procedures for pilot training and testing.

One individual expressed concern that economic, environmental and air traffic management impacts of removing the circling approaches needs to be considered in this policy. The individual also recommended that IFR use over the last several years be evaluated and included as part of the policy.

The FAA has invested significant resources in the infrastructure of the NAS pertaining to IFPs, and a significant portion of those resources have resulted in an increased number of NextGen IFPs. Because of this, the IFP inventory is at an unsustainable level given the current and projected resources needed to maintain IFPs. Also, the criteria outlined in the proposed policy is a result of a collaborative effort between the FAA and aviation industry stakeholders to accomplish a reduction in the number of circling procedures while considering the very concerns expressed by the individual. One of the guiding principles adopted by the TOC Task Group in considering their recommendations for this effort was that IFP utilization was determined not to be a valid stand-alone criterion, as usage data can be inaccurate or unavailable in some cases and does not necessarily reflect the operational value of an IFP. The proposed criteria are only a foundation for identifying procedures for cancellation and is not sole justification for any IFP being cancelled. Once a procedure is identified and proposed for cancellation, and that proposal is posted on the IFP Gateway, stakeholders will have the opportunity to present their justification for retaining that procedure, and each justification will be considered and adjudicated before a determination is made to either retain or cancel that procedure.

One individual stated that the proposed policy does not account for convenience and efficiency, and provided an example of the VOR–A at MOTON FIELD MUNI (K06A). The individual also asked the FAA to add the following to the criteria:

- Does circling allow the pilot to access runways not served by other IAPs?
- Does the existing approach allow the pilot to approach the field and/or access the runway more directly than the alternative straight in approaches?
- Are sufficient alternatives available so that the removal of this circling approach will not force pilots to fly significantly further to access each runway when considering all possible arrival sectors and winds?
- Would removing this circling approach cause harm by forcing pilots to fly further to access straight in approaches?

As stated previously, the proposed policy could minimally impact accessibility to some airports, but the current inventory of IFPs is not sustainable. The proposed policy is intended to minimize IFP redundancy currently present in the NAS, and convenience and efficiency could be impacted at some airports. However, convenience and efficiency have also been significantly enhanced at numerous airports with the implementation of NextGen IFPs, so the commenter's assertion would need to be considered for each specific IFP and each airport with consideration given to the IFP enhancements made at that airport over the last several years. As noted, the public will have an opportunity to provide comment on a proposed cancellation of a specific IFP prior to its cancellation.

The K06A VOR–A is a good example of the IFP redundancy that currently exists within the NAS, as it highlights the investment of resources in NextGen IFPs. At this particular airport, K06A, two RNAV (GPS) IAPs have been installed—one for each runway end. Both of the NextGen approaches have circling minima as good as or better than the minima offered by the VOR–A. Additionally, both of the NextGen IAPs have straight-in minima substantially better than the circling minima offered by the VOR–A, and yet the commenter points out that the VOR–A is useful because the NextGen IAPs add significant distance (time and fuel) to ''shoot those approaches from the north or south.'' The FAA notes that NextGen IAPs can also be used to approach from a particular direction, east in the commenter's comment, then circle to land on the appropriate runway if needed. Additionally, straight-in approaches with circling minima are viable IAPs for circling to other runways at that airport in accordance with any circling restrictions noted on the associated IAP.

Regarding the additional questions the commenter recommended adding to the criteria, the first criterion request is unnecessary as the FAA's proposed criteria prevents the cancellation of all circling procedures at an airport, so runways currently accessible via circling will remain accessible. For the other 3 criteria recommendations from the commenter, all users will be able to provide justification for objecting to the cancellation of specific circling procedures once a particular circling procedure has been proposed for cancellation and publicized on the IFP Gateway, and those objections will be adjudicated on their own merits. Additionally, the commenter's terms ''more directly'', ''significantly further'', and ''cause harm'' are both subjective and ambiguous, and do not provide measurable elements with which to determine a specific procedure's necessity and/or value.

One individual expressed their approval of the proposed policy and expressed their opinion, based upon their stated aviation experience, that circle-to-land maneuvers are dangerous as they can lead to task saturation. The commenter also supported the proposed criteria that ensures at least one circling procedure remains at airports that currently have a circling procedure.

The FAA appreciates the commenter's support of this initiative, but also recognizes the need and purpose for circling procedures in the NAS. While circling maneuvers may involve unique requirement for aviators and air traffic control specialists, it is something that is accounted for in training requirements and, as such, is not considered dangerous. The FAA recognizes that unique situations and conditions could warrant a circling approach, and the design criteria for circling approaches reflects that.

One individual expressed concern regarding their inability to utilize RNAV (GPS) IFPs due to their lack of ADS–B equipage at this time, and the only non-NextGen IAP at their home airport, CLARENCE E. PAGE MUNI (KRCE), is the VOR–B.

The FAA notes that this particular approach would not be considered for cancellation as part of this policy due to it not meeting the criteria that states, ''Would cancellation result in removal of circling minima from all conventional NAVAID procedures at an airport?'' Because the cancellation of the KRCE VOR–B would result in the cancellation of circling minima from all conventional NAVAID procedures at KRCE, it would not be considered for cancellation as part of this policy.

One individual expressed concerns pertaining to the safety critical nature of circling minima for piston aircraft due to the ability to remain in closer proximity to an airport than when using ''direct RNAV approaches,'' and cited ''deteriorating weather, possible icing, and thunder storm conditions'' as justification for retention of circling minima. The individual's assertions lack sufficient details and specifics for

the FAA to provide an informed response. Accounting for every possible situation and condition of flight with flight procedures is not practical. Both circling maneuvers and straight-in maneuvers are evaluated using the same criteria and one is not safer than the other is. Access to airports is a separate issue and should be raised to the airport owner/operator and Air Traffic Control through comments submitted after notification of a candidate procedure for cancellation under this program.

One individual requested the following criteria to assure that the FAA maintains or improves the access to the airport, stating that access to a candidate location should never be reduced in the interest of process efficiency:

- Availability of SBAS approach procedure to the intended landing runway in lieu of the circle approach to provide direct access to that runway
- If SBAS and ground based navigation is available at that facility the circling minima for the ground based approach should be retained to allow facility access in the event that GPS availability is degraded or not available

As previously stated, this IFP reduction effort could impact access at some airports, but the criteria in this policy are in agreement with the PBN NAS Navigation Strategy effort. The addition of NextGen IFPs at airports across the country has substantially improved access at numerous airports, which significantly offsets and frequently outweighs claims of circling procedure cancellations resulting in reduced access to airports. The transition to a predominantly NextGen NAS requires a reduction in ground-based IFPs and infrastructure as outlined in the VOR MON Final Policy Statement published in the **Federal Register** July 26, 2016. VOR MON policy specifically states, ''The MON will enable pilots to revert from Performance Based Navigation (PBN) to conventional navigation for approach, terminal and en route operations in the event of a GPS outage and supports the NAS transition from VOR-based routes to a more efficient PBN structure consistent with NextGen goals and the NAS Efficient Streamlined Services Initiative.'' In accordance with VOR MON, NextGen, NAS Efficient Streamlined Services Initiative, and PBN NAS Navigation Strategy, conventional navigation services for approach, terminal and en route operations will be minimized in a strategic manner consistent with these initiatives.

One individual recommended additional criteria to take into consideration nearby ''high volume airports'' when considering the cancellation of circling procedures, and the example of using the ILS OR LOC RWY 16 to circle to land RWY 34 at CHICAGO EXECUTIVE (KPWK), and its ''close proximity to CHICAGO OHARE INTL (KORD)'' as an example. The criteria requested by the individual states, ''Would the potential cancelling of the circling minimums involve an airport that is in close proximity to a high volume airport, impact safety, procedures or encounter delays?''

In the commenter's example, the ILS OR LOC RWY 16 at KPWK would retain its circling minima in accordance with the FAA's proposed policy's criteria, ''Would cancellation result in removal of circling minima from all conventional NAVAID procedures at an airport? **Note:** If circling minima exists for multiple Conventional NAVAID procedures, preference would be to retain ILS circling minima.''

Regarding the criteria proposed by the individual, circling procedures are being reviewed at every U.S. airport that has instrument approach procedures. ATC's involvement via notification from the Operations Support Group (Flight Procedures Team) will allow them ample opportunity to prevent the cancellation of circling procedures they deem necessary to their operations, and public notification, via the IFP Gateway, will allow the public ample opportunity to communicate concerns regarding the proposed cancellation of any circling procedure.

IV. Statement of Policy

Based on the comments received, the FAA is finalizing the following policy regarding the criteria and process for the cancellation of standard instrument approach procedures as Part of the national procedures assessment as follows:

All circling procedures will continue to be reviewed through the established IAP periodic review process.[6] As part of that review process, each circling procedure will be evaluated against the following questions:

- Is this the only IAP at the airport?
- Is this procedure a designated MON airport procedure?
- If multiple IAPs serve a single runway end, does this procedure provide the lowest circling minima for that runway?[7] **Note:** If the RNAV circling minima is not the lowest, but is within 50′ of the lowest, the FAA would give the RNAV preference.
- Would cancellation result in removal of circling minima from all conventional NAVAID procedures at an airport? **Note:** If circling minima exists for multiple Conventional NAVAID procedures, preference would be to retain ILS circling minima.
- Would cancellation result in all circling minima being removed from all airports within 20 NMs? This particular criterion recognizes the circling content of the Instrument Rating—Airplane Airman Certification Standards (ACS).
- Will removal eliminate lowest landing minima to an individual runway?

The following questions are applicable only to circling-only procedures:

- Does this circling-only procedure exist because of high terrain or an obstacle which makes a straight-in procedure infeasible or which would result in the straight-in minimums being higher than the circling minima?
- Is this circling-only procedure (1) at an airport where not all runway ends have a straight-in IAP, and (2) does it have a Final Approach Course not aligned within 45 degrees of a runway which has a straight-in IAP?

Further consideration for cancellation under this policy will be terminated if any of the aforementioned questions are answered in the affirmative. If all questions are answered in the negative, the procedure will be processed as described in the following paragraph.

When a candidate has been identified for cancellation, Aeronautical Information Services will post the proposed cancellation on the Instrument Flight Procedures Information Gateway (IFP Gateway) (*https://www.faa.gov/air_traffic/flight_info/aeronav/procedures/*) and send a notification of procedure cancellation memorandum and completed checklist *(see attached NPA Checklist Sample)* to the appropriate Regional Service Area, Operations Support Group.[8] The Regional Service Area, Operations Support Group will follow the same notification process used for standard IFP requests.[9]

[6] Section 2–8 of FAA Order 8260.19 (Flight Procedures and Airspace) sets forth the minimum frequency of review of instrument procedures.

[7] This criterion has been slightly reworded for clarity.

[8] The FAA has placed sample copies of the memorandum and checklist into the docket for this document.

[9] FAA Order 8260.43 (Flight Procedures Management Program) and FAA Order 8260.26 (Establishing Submission Cutoff Dates for Civil Instrument Procedures) contain additional

Continued

Comments regarding the aforementioned circling procedure should be submitted via email to: *AMC-ATO-IFP-Cancellations@faa.gov*. Comments will only be considered and adjudicated when submitted prior to the comment deadline associated with the flight procedure as listed on the IFP Coordination tab of the Instrument Flight Procedures Information Gateway site. Aeronautical Information Services will adjudicate and respond to each comment within 30 days of being received. When a determination is made to cancel a part 97 instrument flight procedure or circling line of minima, the cancellation will be published in the **Federal Register**.

Issued in Oklahoma City, Oklahoma, on June 21, 2018.

Gary Powell,

Director, Aeronautical Information Services.

[FR Doc. 2018–13875 Filed 6–27–18; 8:45 am]

BILLING CODE 4910–13–P

information on this process. These orders are available on the FAA website.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 34–83506; FOIA–193; File No. S7–09–17]

RIN 3235–AM25

Amendments to the Commission's Freedom of Information Act Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is adopting amendments to the Commission's regulations under the Freedom of Information Act (''FOIA''). The Commission is amending the FOIA regulations to reflect changes required by the FOIA Improvement Act of 2016 (''Improvement Act'') and to clarify, update, and streamline the regulations.

DATES: Effective July 30, 2018.

FOR FURTHER INFORMATION CONTACT: Mark Tallarico, Senior Counsel, Office of the General Counsel, (202) 551–5132; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 21, 2017, the Commission proposed amendments to its existing regulations under the FOIA, 5 U.S.C. 552,[1] to reflect changes required by the Improvement Act and to clarify, update, and streamline the language of several procedural provisions. The Commission received four comment letters on the proposed amendments. After consideration of the comments received, the Commission is adopting the amendments to its FOIA regulations as proposed, other than changes to two definitions related to the collection of fees and a few technical modifications for clarity. Due to the scope of the amendments, this final rule replaces the Commission's existing FOIA regulations in their entirety (17 CFR 200.80 through 200.80f).

II. Final Amendments

A. Changes To Conform to the Improvement Act

The Commission is adopting four changes to the Commission's FOIA regulations to conform them to the Improvement Act. These changes are being adopted largely as proposed.[2] First, the final rule revises Section 200.80(a) to provide that records the FOIA requires to be made available for public inspection will be available in electronic format on the Commission's website, *http://www.sec.gov*. Second, the final rule revises Section 200.80(c) to provide that a request for records may be denied to the extent the exemptions in 5 U.S.C. 552(b) apply to the requested records and Commission staff reasonably foresees that disclosure would harm an interest protected by the applicable exemption, the disclosure of the requested records is prohibited by law, or the requested records are otherwise exempted from disclosure under 5 U.S.C. 552(b)(3). Third, the final rule revises the regulations to state that FOIA requesters may seek assistance from the Office of FOIA Services' FOIA Public Liaisons (Sections 200.80(b), (d), and (e)) and to advise FOIA requesters of their right to seek dispute resolution services offered by the Office of Government Information Services in the case of a denied request (Section 200.80(e)). Fourth, the final rule incorporates the amendments to the FOIA requiring agencies, if they do not comply with the time limits, to waive fees, under certain circumstances (Section 200.80(g)).

B. Amendments to Certain Procedural Provisions

The final amendments also revise certain procedural provisions. Those changes clarify, update, and streamline the Commission's regulations, and most of the changes make the regulations consistent with existing practices. These changes are being largely adopted as proposed.[3] The amended regulations, among other things, update the various methods for submitting FOIA requests and administrative appeals (Sections 200.80(b) and (f)); incorporate language requiring requesters to include their full names and return addresses in their FOIA requests (Section 200.80(b)); describe certain information that is required when submitting requests for records about oneself or another individual (Section 200.80(b)); explain the situations in which the Office of FOIA Services staff will work with other Federal agencies that have an interest in agency records that may be responsive to a request (Section 200.80(c)); incorporate language that allows the Office of FOIA Services to seek a one-time clarification of an ambiguous request and toll the time period for responding to the request until the requester clarifies the request (Section 200.80(d)); clarify when the 20-day statutory time limit for responding to requests begins (*i.e.,* when requests are received by the Office of FOIA Services and when requests are modified so that they reasonably describe the records sought) (Section 200.80(d)); clarify the Office of FOIA Services' system for multitrack processing of requests (Section 200.80(d)); and insert a provision to enable the Office of FOIA Services to aggregate requests involving related matters where it appears that multiple requests together constitute a single request that would involve unusual circumstances (Section 200.80(d)).

The final rule also clarifies, consistent with existing practice, that the Office of FOIA Services will close requests if requesters do not take certain steps within set time periods. For example, requesters must respond to the Office of FOIA Services' one-time clarification request within 30 calendar days (Section 200.80(d)); agree to pay

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[1] *See* Release No. 34–82373 (Dec. 21, 2017), 83 FR 291 (Jan. 3, 2018) (''Proposing Release'').

[2] The Commission is making one technical, clarifying modification from the proposal. Specifically, in the first sentence of Section 200.80(a)(2)(ii), the word ''Those'' is changed to ''Persons.''

[3] The Commission is making one technical, clarifying modification from the proposal. Specifically, the third sentence of Section 200–.80(f)(3), is changed from ''Appeals should include a statement of the requester's arguments as to why the records requested should be made available and why the adverse determination was in error'' to ''Appeals should include a statement of the requester's arguments as to why the records requested should be made available and the reason(s) the FOIA requester contends the adverse determination was in error.''

anticipated fees within 30 calendar days of the Office of FOIA Services' fee estimate (Section 200.80(g)); and, when required to do so, make an advance payment within 30 calendar days of the Office of FOIA Services' fee notice (Section 200.80(g)).

C. Revisions to Fee Provisions

Section 200.80(g) of the final rule revises the Office of FOIA Services' fee procedures and fee schedule in two ways. Both of these changes are being adopted as proposed. First, the final rule allows the Office of FOIA Services to collect fees before sending records to a requester instead of seeking payment when the records are sent (Section 200.80(g)(1)). Second, the final rule removes the set duplication fee of 24 cents per page and instead refers requesters to the FOIA fee page on the Commission's website, where the current fee will be posted (Section 200.80(g)(3)(v)).[4] The duplication fee posted on the website will reflect the direct costs of photocopying or producing a printout, taking into account various factors including the salary of the employee(s) performing the work and the cost of materials. The duplication fee posted on the Commission's website will be adjusted as appropriate to reflect current costs. Eliminating the set duplication fee will allow the Office of FOIA Services to align its photocopying and printout fees with the actual costs of duplicating records for production to requesters (in paper format) without having to amend the regulations.

As proposed, the final rule also codifies several existing practices. For example, it states that fees for duplicating records onto electronic medium (including the costs associated with scanning materials, where applicable) will be the direct costs of duplicating records for requesters (Section 200.80(g)(3)(v)); clarifies that the Office of FOIA Services will not process any requests once it determines that a fee may be charged unless the requester commits to pay any estimated fees (Section 200.80(g)(5)(ii)); clarifies the direct costs that can be charged by the Office of FOIA Services as part of search, review, and duplication fees (Section 200.80(g)(3)); and sets forth the various methods by which FOIA processing fees can be paid (Section 200.80(g)(1)).

The final rule also revises existing fee-related definitions and incorporates new fee-related definitions (Section 200.80(g)(2)). As discussed below, some of these definitions have been slightly revised in the final rule in response to comments received on the proposed rule.[5]

D. Elimination of Certain Provisions

As proposed, the final rule eliminates certain provisions in the Commission's current FOIA regulations that repeat information contained in the FOIA statute and do not need to be in the Commission's regulations. Among the provisions that the Commission is removing are: (1) The list of information the FOIA requires the Commission to publish in the **Federal Register** (Section 200.80(a)(1) of the superseded regulations), (2) the categories of records the FOIA requires the Commission to make available for public inspection (Section 200.80(a)(2) of the superseded regulations), and (3) the nine categories of records that are exempt from disclosure under 5 U.S.C. 552(b) (Section 200.80(b) of the superseded regulations). Finally, the final rule eliminates Appendices A through F from the existing FOIA regulations. Appendices A through D and F of the existing regulations provide general information that is available on the Commission's website to the extent it is relevant to the public. The information in Appendix E of the existing regulations is revised and updated and moved to Section 200.80(g) (Fees) of the final rule.

E. Structure of the Final Rule

The structure of the regulations is amended accordingly: Section 200.80(a) (General provisions); Section 200.80(b) (Requirements for making requests); Section 200.80(c) (Processing requests); Section 200.80(d) (Time limits and expedited processing); Section 200.80(e) (Responses to requests); Section 200.80(f) (Administrative appeals); and Section 200.80(g) (Fees).

III. Public Comments

The Commission received four comment letters in response to the proposed rulemaking. Two of the comments concern definitions in the fee provisions of the proposed rule and suggest substantive changes to the Commission's proposed fee definitions.[6] One comment suggests technical clarifications to some of the Commission's FOIA procedures.[7] The final letter supports certain provisions in the proposed rule.[8] The Commission has considered the comments received and, as discussed below, in certain cases has made modifications in the final amendments in response to those comments.

In proposing the definitions in the fee provisions of the proposed rule, the Commission considered the FOIA's directive that agencies ''promulgate regulations . . . specifying the schedule of fees applicable to the processing of requests . . . [and that] [s]uch schedule shall conform to the guidelines which shall be promulgated . . . by the Director of the Office of Management and Budget [(''OMB'')].'' [9] In light of this directive, the Commission looked to the definitions in the OMB's 1987 FOIA fee guidelines except to the extent that courts have held that the definitions are not consistent with the FOIA.[10]

A. Section 200.80(g)(2)(iv) (Definition of Educational Institution)

One commenter expressed concern that the Commission's definition of ''educational institution'' in proposed Section 200.80(g)(2)(iv) is inconsistent with the FOIA provision that addresses fees that agencies can charge when ''records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research.'' [11] The commenter stated that the Commission's proposed definition of ''educational institution'' ''deviates from the statute in two respects''—the definition ''omits reference to 'scientific research' '' and it ''requires that the purpose of the request be 'to further scholarly research' whereas the statute requires only that the educational institution have a purpose of scholarly or scientific research.'' [12]

[4] The initial posted fee will be 15 cents per page, and the Commission is already charging this lower cost.

[5] The Commission is also making several technical, clarifying modifications from the proposal in the fee provisions. In the first sentence of Section 200.80(g)(3), the phrase ''shall charge the fees summarized in chart form . . .'' is changed to ''shall charge fees for the services summarized in chart form . . .'' to more accurately describe the chart. In the first sentence of Section 200.80(g)(3)(ii)(B), the phrase '' to locate records'' is changed to ''to locate or identify responsive records'' so as to more precisely describe the search. In Section 200.80(g)(12)(ii), the phrase ''shall consider all four of the following factors'' is changed to ''shall consider each of the following four factors.''

[6] *See* letter from Ryan P. Mulvey, Counsel, Cause of Action Institute, dated January 3, 2018 (''CoA Institute letter''); letter from Keith P. Bishop, dated January 12, 2018 (''Bishop letter'')

[7] *See* letter from Rachel Wood, dated April 27, 2018.

[8] *See* letter from Lori Gayle Nuckolls, dated January 22, 2018.

[9] 5 U.S.C. 552(a)(4)(A)(i).

[10] Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR at 10,018 (March 27, 1987).

[11] *See* Bishop letter (quoting 5 U.S.C. 552(a)(4)(A)(ii)(II)).

[12] *See* Bishop letter.

The FOIA does not define the term ''educational institution.'' The Commission's proposed definition of ''educational institution'' did not include a reference to ''scientific research'' because in promulgating its fee guidelines, the OMB found that ''the statute and the legislative history recite the formula 'educational or scientific institution/scholarly or scientific research,' and it seems clear that the phrase was meant to be read disjunctively so that scholarly applies to educational institution and scientific applies to non-commercial scientific institution.'' [13] In addition, ''scholarly research'' is a broad term that would generally include ''scientific research.'' Accordingly, the Commission does not believe it is necessary to include ''scientific research'' as part of its definition of ''educational institution.''

In response to the commenter's suggestion to remove from the definition of ''educational institution'' the requirement that the records are sought to ''further scholarly research,'' the Commission is deleting this language from the definition and is inserting language to clarify that the requester must show that the request is made in connection with the requester's role at the educational institution and that the records are not sought for commercial or personal use. The definition of ''educational institution'' in the final rule at § 200.80(g)(2)(iv) is thus revised to read:

Educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with the requester's role at the educational institution and that the records are not sought for commercial or personal use.

B. Section 200.80(g)(2)(v) (Definition of Noncommercial Scientific Institution)

One commenter expressed concern that the Commission's proposed definition of ''noncommercial scientific institution'' in proposed § 200.80(g)(2)(v) is inconsistent with the FOIA ''because it imposes additional limitations and conditions not found in the statutory definition.'' [14] This commenter stated that the FOIA, unlike the proposed rule, ''does not require (i) that the institution be operated solely for the purpose of conducting scientific research, or (ii) that the request is being made under the auspices of a qualifying institution.'' [15]

The Commission believes that its proposed definition of ''noncommercial scientific institution'' is consistent with the FOIA. The FOIA does not define the term ''noncommercial scientific institution'' and the Commission has adopted the definition from the OMB's FOIA fee guidelines. Those guidelines provide that the ''term 'non-commercial scientific institution' refers to an institution that is not operated on a 'commercial' basis . . . and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.'' [16] The OMB guidelines further state that ''[t]o be eligible for inclusion [in the noncommercial scientific institution] category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of . . . scientific . . . research.'' [17] Accordingly, the Commission is adopting the proposed definition of ''noncommercial scientific institution'' in Section 200.80(g)(2)(v) of the final rule without change.

C. Section 200.80(g)(2)(vi) (Definition of Representative of the News Media or News Media Requester)

Two commenters expressed concern that the Commission's proposed definition of ''representative of the news media'' or ''news media requester'' is inconsistent with the statutory definition.[18] Both commenters noted that the statutory definition does not require a ''news media requester'' to be ''organized and operated to publish or broadcast news to the public.'' [19] One of the commenters specifically recommended striking the ''organized and operated'' standard from the definition.[20] In response to these comments, the Commission has omitted the ''organized and operated'' language in the final rule.

One commenter addressed three additional considerations related to the Commission's proposed definition of ''news media requester.'' [21] This commenter first recommended further revising the proposed definition of ''news media requester'' by deleting the last sentence of the proposed definition (''The Office of FOIA Services will determine whether to grant a requester news media status on a case-by-case basis based upon the requester's intended use of the requested material.'') because ''the statute's focus [is] on requesters, rather than [their] requests.'' [22] In response to this recommendation, the Commission has removed the final sentence from the definition of ''news media requester'' in the final rule.

This commenter also recommended that the Commission recognize that a news media requester may use ''editorial skills'' to turn ''raw materials into a distinct work'' when writing documents such as press releases and editorial comments, as the U.S. Court of Appeals for the District of Columbia stated in *Cause of Action* v. *Federal Trade Commission*.[23] The commenter did not recommend any changes to the rule to address this issue, and the Commission believes none are necessary.[24] The Commission, as appropriate, will consider *Cause of Action* and any other relevant precedents in applying the fee provisions in its regulations.

Finally, this commenter recommended that the Commission ''should indicate [in its definition of ''news media requester''] that any examples of news media entities it may include in its regulations are non-exhaustive.'' [25] The Commission is not making any changes in response to this comment because the definition in the final rule does not contain any examples of news media entities.

IV. Other Matters

If any of the provisions of these amendments, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

V. Economic Analysis

The Commission is sensitive to the economic effects, including the costs and benefits, that result from its rules. Section 23(a)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition and prohibits any rule that would impose a burden on

[13] 52 FR at 10,014.

[14] *See* Bishop letter.

[15] *Id.*

[16] 52 FR at 10,018.

[17] 52 FR at 10,019.

[18] *See* Bishop letter; CoA Institute letter.

[19] *Id.*

[20] *See* CoA Institute letter.

[21] *Id.*

[22] *Id.* (citing *Cause of Action* v. *Federal Trade Commission* 799 F.3d 1108, 1121 (DC Cir. 2015)).

[23] *Id.* (citing *Cause of Action,* 799 F.3d at 1122–25).

[24] *Id.*

[25] *Id.*

competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[26] Further, Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[27]

As explained in the proposal and discussed further below, the Commission believes that the economic effects of the final rule will be limited. The Commission notes that, where possible, it has attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments. In some cases, however, the Commission is unable to quantify the economic effects because it lacks the information necessary to provide a reasonable estimate. Additionally, some of the potential benefits of the amendments are inherently difficult to quantify.

The amendments to the Commission's FOIA regulations fall into four categories. First, as discussed in more detail above, the Commission is amending its regulations to conform the regulations to the Improvement Act. Consistent with the Improvement Act, the amended rule provides: (1) Records required to be made available pursuant to the FOIA will be made available in electronic format; (2) records will be withheld under the exemptions in 5 U.S.C. 552(b) only if Commission staff reasonably foresees that disclosure would harm an interest protected by the applicable exemption or disclosure is prohibited by law; (3) FOIA requesters may seek assistance from the Office of FOIA Services' FOIA Public Liaisons and will be advised that they have the right to seek dispute resolution services from the Office of Government Information Services if their request is denied; and (4) the Office of FOIA Services is required to waive fees, in certain circumstances, if it does not comply with the time limits under the FOIA. The Commission believes that these changes will have minimal impact on FOIA requesters because they largely codify the Commission's existing practices. To the extent the amendments result in these practices being followed more consistently, they could benefit the public by increasing the amount of information available, making more information available in an electronic format, and ensuring that requesters know of their right to seek alternative dispute resolution. The Commission also believes that the public could benefit from the increased transparency regarding these practices. The Commission does not expect these amendments to result in additional costs to any member of the public.

Second, the final rule will amend several procedural provisions within the Commission's FOIA regulations, which will better reflect and improve existing practice. Most of these changes codify existing Office of FOIA Services practice, including: (1) Adding to the regulation additional methods for submitting FOIA requests and administrative appeals; (2) clarifying the existing procedures for submitting requests for records about oneself or another individual; (3) clarifying the existing procedures for submitting a proper FOIA request and seeking clarification of a request; (4) clarifying existing procedures for submitting an administrative appeal; and (5) clarifying the existing practice that limits administrative appeals to written filings (*i.e.,* there is no opportunity for personal appearance, oral argument, or hearing on appeal). The Commission does not expect these changes to result in additional costs to any member of the public. The Commission also expects that there would be some benefit to FOIA requesters from the increased transparency regarding these practices.

Two procedural changes could impose limited costs on members of the public. First, FOIA requesters will be required to include their full names and addresses in their requests. Providing a full name and address is not itself burdensome, but some requesters may prefer to remain anonymous and could be deterred from submitting FOIA requests by this requirement. However, because nearly all FOIA requesters provide this information already, the Commission expects that the economic impact of the amendment will be minimal. Second, the Office of FOIA Services will be able to aggregate related requests from one requester (or a group of requesters). The Office of FOIA Services can aggregate requests that on their own do not involve ''unusual circumstances,'' as defined in the amended regulations, or warrant placement in a track for complex requests (*i.e.,* requests that require more work and/or time to process than most requests), so aggregation may lead to extended deadlines for processing a request or cause a request to be handled after other complex requests. Based on past experience, the Commission expects that few requests will be aggregated. In addition, if the aggregation of requests results in the requests being placed in a track for complex requests that could extend the processing time, the requester can modify the request so that it can be processed more quickly. Thus, the Commission expects that the impact of this amendment also will be minimal.

Third, the Commission is revising the Office of FOIA Services' fee procedures and fee schedule in several ways, including: (1) Eliminating from the rule the per page duplication fee for copying or printing requested records, and instead referring requesters to the FOIA fee page on the Commission's website; (2) allowing the Office of FOIA Services to collect fees before sending records to a requester instead of seeking payment when the records are sent; (3) clarifying the direct costs that can be charged by the Office of FOIA Services as part of its search, review, and duplication fees; and (4) codifying the existing Office of FOIA Services practice of charging requesters the actual cost of production for materials produced in an electronic format. In general, lowering fees associated with FOIA requests could encourage additional FOIA submissions, while raising fees could deter them. However, as discussed below, the Commission does not anticipate that any of its changes to the Office of FOIA Services' fee procedures will impose significant new costs on FOIA requesters.

With respect to the elimination of the set per page duplication fee, the Office of FOIA Services has already lowered its per page duplication fee from 24 cents to 15 cents to reflect its actual duplication costs. Even if the Office of FOIA Services were to increase the per page duplication fee in the future, the impact of any increase would likely be minimal. Information about the fees the Commission has collected for FOIA requests for the past seven years allows the Commission to estimate the economic effects of this proposed change. Table 1 shows the number of requests received and processed by the Commission during fiscal years 2011 through 2017 and the fees the Commission collected. The fees collected by the Commission for processing FOIA requests include charges for staff time associated with locating, reviewing, and copying responsive documents, as well as duplication fees for paper copies and production costs for other types of media. The fee schedule for FOIA

[26] 15 U.S.C. 78w(a).

[27] 15 U.S.C. 78c(f).

requests is available on the Commission's website.

TABLE 1—FOIA REQUESTS IN FISCAL YEARS 2011 TO 2017

Fiscal year	Requests received	Requests processed	Fees collected for processing requests
2011	11,555	11,562	$78,005.94
2012	11,292	11,302	27,577.00
2013	12,275	12,167	35,954.30
2014	14,862	14,757	22,670.81
2015	16,898	16,207	19,890.07
2016	14,458	15,196	41,029.68
2017	13,063	13,069	35,025.15

As shown in Table 1, from fiscal years 2011–2017, the Office of FOIA Services collected an average of $37,164.71 per year in fees for processing an average of 13,466 requests. These amounts correspond to an average fee of $2.76 collected per request processed.[28] Even if all of those fees were for duplication (which they were not), a one cent per page increase in duplication fees would result in an increase in total fees collected of approximately $1,548.53,[29] corresponding to an average fee of $2.87 collected per request processed.[30]

With respect to the amendment providing that the FOIA Office can collect fees before sending records to a requester (instead of seeking payment when the records are sent), the Commission expects that any additional cost will be limited to a slight delay in receiving documents. The timing of the collection will not itself impose any additional costs on FOIA requesters because the timing would not alter the amount of fees charged. Any delay in receiving the documents will not be significant because a FOIA requester could make an electronic payment upon receipt of the request for payment, and the Office of FOIA Services would then provide the documents. The Commission notes that some requesters may choose to forgo receiving the records in question if the fees are substantial, though even this impact may be muted because requesters will have been advised of and approved potential charges before requests are processed by the FOIA Office.

The clarification regarding direct costs and codification of existing practices with respect to fees for materials produced in an electronic format are consistent with existing practices, and the Commission therefore does not expect these amendments to impose any additional burden on the public. The other changes to the Office of FOIA Services' fee procedures also codify existing processes and will therefore not impose any additional burden on requesters. These changes include: (1) Clarifying that the Office of FOIA Services will not process any requests once it determines that a fee may be charged unless the requester commits to pay the estimated fees; and (2) adding and clarifying certain fee-related definitions. The Commission does not expect these amendments to result in additional costs to any member of the public. To the contrary, the Commission believes that the public could benefit from the increased transparency regarding these practices. As discussed above, some of the fee-related definitions have been revised in the final rule in response to comments on the proposed rule. Specifically, the Commission has revised the definitions of ''educational institution'' and ''representative of the news media'' or ''news media requester.'' The revisions serve to clarify and broaden the scope of existing definitions, which may benefit some requesters. The Commission does not expect these revisions to result in additional costs to any member of the public.

Finally, the final rule will eliminate certain provisions in the SEC's FOIA regulations that are restatements of provisions in the FOIA statute. The Commission does not expect these amendments to result in any economic effects, as the elimination of these redundant provisions will not have any substantive consequence.

The Commission requested comments on all aspects of the benefits and costs of the proposal. No commenter addressed the economic analysis contained in the proposal. The Commission continues to believe that the amendments to the Commission's FOIA regulations will not have any significant impact on efficiency, competition, or capital formation.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980,[31] the Commission certified that, when adopted, the amendments to 17 CFR 200.80 would not have a significant economic impact on a substantial number of small entities. This certification, including our basis for the certification, was included in the proposing release. The Commission solicited comments on the appropriateness of its certification, but received none. The Commission is adopting the final rules as modified and discussed above. These modifications to the proposal would not alter the basis upon which the certification was made.

VII. Paperwork Reduction Act

The Commission stated in the proposed release that the proposed amendments to the FOIA regulations do not contain any collection of information as defined by the Paperwork Reduction Act of 1995 (''PRA'').[32] The Commission also determined that the proposed amendments would not create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, the Commission did not submit the proposed amendments to the Office of Management and Budget for review under the PRA.[33] The Commission solicited comments on whether its conclusion that there are no new collections of information is

[28] Calculated as $37,164.71/13,466 = $2.76.

[29] To arrive at this estimated increase, we divide $37,164.71 in duplication fees by a cost of $0.24 per page to derive an estimate of approximately 154,853 pages of copies on average per fiscal year. 154,853 pages × $0.01 increase in per-page duplication fees = $1,548.53 in additional total processing fees.

[30] Calculated as ($37,164.71 + $1,548.53)/13,466 = $2.87.

[31] 5 U.S.C. 605(b).

[32] 44 U.S.C. 3501 *et seq.*

[33] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

correct, and it did not receive any comments.

VIII. Statutory Authority and Text of Rule Amendments

The amendments contained herein are being proposed under the authority set forth in Public Law 114–185 § 3(a), 130 Stat. 538; 5 U.S.C. 552; 15 U.S.C. 77f(d), 77s, 77ggg(a), 78d–1, 78w(a), 80a–37(a), 80a–44(b), 80b–10(a), and 80b–11(a).

List of Subjects in 17 CFR Part 200

Administrative practice and procedure; Freedom of information.

Text of Amendments

For the reasons stated in the preamble, the Commission amends 17 CFR part 200 as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

■ 1. The authority citation for subpart D is revised to read as follows:

Authority: 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 77sss, 78m(F)(3), 78w, 80a–37, 80a–44(a), 80a–44(b), 80b–10(a), and 80b–11, unless otherwise noted.

Section 200.80 also issued under Public Law 114–185 sec. 3(a), 130 Stat. 538; 5 U.S.C. 552; 15 U.S.C. 77f(d), 77s, 77ggg(a), 78d–1, 78w(a), 80a–37(a), 80a–44(b), 80b–10(a), and 80b–11(a), unless otherwise noted.

Section 200.82 also issued under 15 U.S.C. 78n.

Section 200.83 also issued under E.O. 12600, 3 CFR, 1987 Comp., p. 235.

■ 2. Section 200.80 is revised to read as follows:

§ 200.80 Securities and Exchange Commission records and information.

(a) *General provisions.* (1) This section contains the rules that the U.S. Securities and Exchange Commission follows in processing requests for records under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, as amended. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (''OMB Guidelines''). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Commission's Privacy Act regulations at subpart H, as well as this section.

(2)(i) Records that the FOIA requires to be made available for public inspection in an electronic format (pursuant to 5 U.S.C. 552(a)(2)) are accessible through the Commission's website, *http://www.sec.gov.* Each division and office of the Commission is responsible for determining which of its records are required to be made publicly available in an electronic format, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each division and office shall ensure that its posted records and indexes are reviewed and updated on an ongoing basis.

(ii) Persons who do not have access to the internet may obtain these records by contacting the Commission's Office of FOIA Services by telephone at 202–551–7900, by email at *foiapa@sec.gov,* or by visiting the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–2736, on official working days between the hours of 10:00 a.m. and 3:00 p.m.

(b) *Requirements for making requests for records*—(1) *How made and addressed.* The Commission has a centralized system for responding to FOIA requests, with all requests processed by the Office of FOIA Services. Requests for agency records must be in writing and include the requester's full name and a legible return address. Requesters may also include other contact information, such as an email address and a telephone number. Requests may be submitted by U.S. mail or delivery service and addressed to the Freedom of Information Act Officer, SEC, 100 F Street NE, Washington, DC 20549. Requests may also be made by facsimile (202–772–9337), email (*foiapa@sec.gov*), or online at the Commission's website (*http://www.sec.gov*). The request (and envelope, if the request is mailed or hand-delivered) should be marked ''Freedom of Information Act Request.''

(2) *Requests for records about oneself or another individual.* (i) A requester who is making a request for records about himself or herself must comply with the verification of identity provisions set forth in subpart H of this part to obtain any documents that would not be available to the public under the FOIA.

(ii) For requests for records about another individual, a requester may receive greater access by submitting either a notarized authorization signed by the individual permitting disclosure of his or her records or proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). The Office of FOIA Services can require a requester to supply additional information if necessary to verify that a particular individual has consented to disclosure.

(3) *Description of records sought.* A FOIA request must reasonably describe the agency records sought with sufficient specificity with respect to names, dates, and subject matter to enable personnel within the divisions and offices of the Commission to locate them with a reasonable effort. Before submitting a request, a requester may contact the Office of FOIA Services' FOIA Public Liaisons to discuss the records they are seeking and to receive assistance in describing the records (contact information for these individuals is on the Commission's website, *http://www.sec.gov*). If the Office of FOIA Services determines that a request does not reasonably describe the records sought, it shall inform the requester what additional information is needed or how the request is insufficient. A requester who is attempting to reformulate or modify such a request may discuss the request with the Office of FOIA Services' designated FOIA contact, its FOIA Public Liaisons, or a representative of the Office of FOIA Services, each of whom is available to assist the requester in reasonably describing the records sought. When a requester fails to provide sufficient information within 30 calendar days after having been asked to reasonably describe the records sought, the Office of FOIA Services shall notify the requester in writing that the request has not been properly made, that no further action will be taken, and that the FOIA request is closed. Such a notice constitutes an adverse determination under paragraph (e)(2) of this section for which the Office of FOIA Services shall follow the procedures for a denial letter under paragraph (e)(2) of this section. In cases where a requester has modified his or her request so that it reasonably describes the requested records, the date of receipt for purposes of the 20-day time limit of paragraph (d) of this section shall be the date of receipt of the modified request.

(c) *Processing requests*—(1) *In general.* (i) A request for records may be denied to the extent the exemptions in 5 U.S.C. 552(b) apply to the requested records and:

(A) Commission staff reasonably foresees that disclosure would harm an interest protected by the applicable exemption; or

(B) The disclosure of the requested records is prohibited by law or is exempt from disclosure under 5 U.S.C. 552(b)(3).

(ii) In determining which records are responsive to a request, the Office of FOIA Services ordinarily will include only records in the agency's possession as of the date that it begins its search.

(2) *Re-routing of misdirected requests.* Any division or office within the Commission that receives a written request for records should promptly forward the request to the Office of FOIA Services for processing.

(3) *Consultation, referral, and coordination.* When reviewing records located in response to a request, the Office of FOIA Services will determine whether another Federal agency is better able to determine if the record is exempt from disclosure under the FOIA. As to any such record, the Office of FOIA Services will proceed in one of the following ways:

(i) *Consultation.* In instances where a record is requested that originated within a division or office within the Commission and another Federal agency has a significant interest in the record (or a portion thereof), the Office of FOIA Services will consult with that Federal agency before responding to a requester. When the Office of FOIA Services receives a request for a record (or a portion thereof) in its possession that originated with another entity within the Federal Government that is not subject to the FOIA, the Office of FOIA Services will typically consult with that entity prior to making a release determination.

(ii) *Referral.* When the Office of FOIA Services receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency subject to the FOIA, the Office of FOIA Services will typically refer the record to that agency for direct response to the requester. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the Office of FOIA Services and the originating agency jointly agree that the Office of FOIA Services is in the best position to make a disclosure determination regarding the record, then the record may be handled as a consultation and processed by the Office of FOIA Services. Whenever the Office of FOIA Services refers a record to another Federal agency for direct response to the requester, the Office of FOIA Services shall notify the requester in writing of the referral and inform the requester of the name of the agency to which the record was referred.

(iii) *Coordination.* If disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an exemption, the Office of FOIA Services generally will coordinate with the originating agency to seek its views as to disclosure of the record and then advise the requester of the release determination for the record that is the subject of the coordination.

(iv) *Classified information.* On receipt of any request involving classified information, the Commission staff in possession of the information shall determine whether the information is currently and properly classified and take appropriate action to ensure compliance with subpart J of this part. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another Federal agency under an executive order concerning the classification of records, the Office of FOIA Services shall refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever agency records contain information that has been classified by another Federal agency, the Office of FOIA Services shall refer the responsibility for responding to that portion of the request to the agency that classified the underlying information except in circumstances that come within paragraph (c)(3)(iii) of this section.

(d) *Time limits and expedited processing*—(1) *In general.* The Office of FOIA Services will seek to respond to requests according to their order of receipt within each track of the Office of FOIA Services' multitrack processing system as described in paragraph (d)(4) of this section.

(2) *Initial response.* A determination whether to comply with a FOIA request shall be made within 20 days (excepting Saturdays, Sundays, and legal public holidays) from the date the Office of FOIA Services receives a request for a record under this part, except when the circumstances described in paragraph (d)(3), (5), or (7) of this section are applicable. In instances where a FOIA requester has misdirected a request that is re-routed pursuant to paragraph (c)(2) of this section, the response time shall commence on the date that the request is first received by the Office of FOIA Services, but in any event not later than 10 working days after the request is first received by any division or office of the Commission.

(3) *Clarification of request.* The Office of FOIA Services may seek clarification of a request (or a portion of a request) for records. The request for clarification generally should be in writing. The first time the Office of FOIA Services seeks clarification, the time for responding to the entire request (set forth in paragraph (d)(2) of this section) is tolled until the requester responds to the clarification request. The tolled period will end when the Office of FOIA Services receives a response from the requester that reasonably describes the requested records. If the Office of FOIA Services asks for clarification and does not receive a written response from the requester within 30 calendar days from the date of the clarification request, the Office of FOIA Services will presume that the requester is no longer interested in the record(s) sought and notify the requester that any portion of the request as to which clarification was sought has been closed.

(4) *Multitrack processing.* The Office of FOIA Services shall use a multitrack system for processing FOIA requests. The Office of FOIA Services shall designate one track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (d)(7) of this section. The Office of FOIA Services shall use two or more additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work and/or time needed to process the request. Among the factors the Office of FOIA Services may consider are the time to perform a search, the number of pages that must be reviewed in processing the request, and the need for consultations or referrals. The Office of FOIA Services shall advise requesters of the track into which their request falls and, when appropriate, shall offer the requesters an opportunity to narrow the scope of their request so that it can be placed in a different processing track.

(5) *Unusual circumstances.* The Office of FOIA Services may extend the time period for processing a FOIA request in ''unusual circumstances.'' To extend the time, the Office of FOIA Services shall notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request is expected to be completed. If the extension exceeds 10 working days, the Office of FOIA Services shall provide the requester, in writing, with an opportunity to modify the request or arrange an alternative time frame for processing the request or a modified request. The Office of FOIA Services shall also make available its FOIA Public Liaisons to assist in the resolution of any disputes and notify the requester of the right to seek dispute resolution services from the Office of Government Information Services. For purposes of this section, ''unusual circumstances'' include:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(ii) The need to search for, collect, and appropriately examine a

voluminous amount of separate and distinct records that are the subject of a single request.

(iii) The need to consult with another Federal agency having a substantial interest in the determination of the FOIA request or among two or more divisions or offices within the Commission having substantial subject-matter interest therein.

(6) *Aggregating requests.* The Office of FOIA Services may aggregate requests in cases where it reasonably believes that multiple requests, submitted either by a requester or by a group of requesters acting in concert, together constitute a single request that would involve unusual circumstances, as defined in paragraph (d)(5) of this section. Multiple requests involving unrelated matters shall not be aggregated. The Office of FOIA Services shall advise requesters, in writing, when it determines to aggregate multiple requests and comply with paragraph (d)(5) of this section. Aggregation of requests for this purpose will be conducted independent of aggregation requests for fee purposes under paragraph (g)(8) of this section.

(7) *Expedited processing.* The Office of FOIA Services shall grant a request for expedited processing if the requester demonstrates a ''compelling need'' for the records. ''Compelling need'' means that a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to an individual's life or physical safety or, if the requester is primarily engaged in disseminating information, an urgency to inform the public about an actual or alleged Federal Government activity.

(i) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(ii) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining why there is a ''compelling need'' for the records.

(iii) The Office of FOIA Services shall determine whether to grant or deny a request for expedited processing and provide notice of that determination within 10 calendar days of receipt of the request by the Office of FOIA Services. A request for records that has been granted expedited processing shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that determination shall be decided expeditiously.

(8) *Appeals.* An administrative appeal shall be decided within 20 days (excepting Saturdays, Sundays, and legal public holidays) from the date the Office of FOIA Services receives such appeal except in the unusual circumstances specified in paragraph (d)(5) of this section. In those unusual circumstances, the 20-day time limit may be extended by written notice to the person making the appeal setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension of more than 10 working days.

(e) *Responses to requests for records*—(1) *Acknowledgment of requests.* Upon receipt of a request for records, the Office of FOIA Services ordinarily will send the requester an acknowledgment letter that provides an assigned request number for further reference and, if necessary, confirms whether the requester is willing to pay fees.

(2) *Responses to requests.* (i) Any letter determining whether to comply with a request will inform the requester of the right to seek assistance from the Office of FOIA Services' FOIA Public Liaisons.

(ii) If the Office of FOIA Services makes a determination to grant a request in whole or in part, it shall notify the requester in writing of such determination, disclose records to the requester, and collect any applicable fees.

(iii) If the Office of FOIA Services makes an adverse determination regarding a request, it shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the requested record does not exist (or is not subject to the FOIA), cannot be located, or has previously been destroyed; or the requested record is not readily producible in the form or format sought by the requester. Adverse determinations also include designations of requesters' fee category, denials of fee waiver requests, or denials of requests for expedited processing.

(iv) An adverse determination letter shall be signed and include:

(A) The names and titles or positions of each person responsible for the adverse determination;

(B) A brief statement of the reasons for the adverse determination, including any FOIA exemption applied by the official denying the request;

(C) For records disclosed in part, markings or annotations to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible;

(D) An estimate of the volume of any records or information withheld by providing the number of pages withheld in their entirety or some other reasonable form of estimation. This estimate is not required if the volume is otherwise indicated by deletions marked on the records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable FOIA exemption;

(E) A statement that the adverse determination may be appealed under paragraph (f) of this section, and a description of the requirements for filing an administrative appeal set forth in that paragraph; and

(F) A statement of the right of the requester to seek dispute resolution services from the Office of FOIA Services' FOIA Public Liaisons or the Office of Government Information Services (''OGIS'').

(3) *Mediation services.* OGIS offers mediation services to resolve disputes between requesters and the Office of FOIA Services as a non-exclusive alternative to litigation. Requesters with concerns about the handling of their requests may contact OGIS.

(f) *Administrative appeals*—(1) *Administrative review.* If a requester receives an adverse determination as described in paragraph (e)(2)(iii) of this section, or the request has not been timely determined within the time period prescribed in paragraph (d)(2) of this section or within an extended period permitted under paragraph (d)(5) of this section, the requester may file an appeal to the Office of the General Counsel consistent with the procedures described in paragraphs (f)(2) through (4) of this section. A requester must generally submit a timely administrative appeal before seeking review by a court of an adverse determination.

(2) *Time limits.* Appeals can be submitted in writing or electronically, as described in paragraph (f)(3) of this section. The appeal must be received within 90 calendar days of the date of the written denial of the adverse determination and must be received no later than 11:59 p.m., Eastern Time, on the 90th day. If the Office of FOIA Services has not issued a determination on a request, an appeal may be submitted any time after the statutory time period for responding to a request ends.

(3) *Contents of appeal.* Appeals should be clearly and prominently identified at the top of the first page as ''Freedom of Information Act Appeal'' and should provide the assigned FOIA

request number. The appeal should include a copy of the original request and adverse determination. Appeals should include a statement of the requester's arguments as to why the records requested should be made available and the reason(s) the FOIA requester contends the adverse determination was in error. If only a portion of the adverse determination is appealed, the requester must specify which part is being appealed.

(4) *How to file and address an appeal.* If submitted by U.S. mail or delivery service, the appeal must be sent to the Office of FOIA Services at 100 F Street NE, Washington, DC 20549. Appeals may also be made by facsimile at 202–772–9337, email (*foiapa@sec.gov*), or online at the Commission's website (*http://www.sec.gov*). A legible return address must be included with the FOIA appeal. The requester may also include other contact information, such as a telephone number and/or email address.

(5) *Adjudication of appeals.* The Office of the General Counsel has the authority to grant or deny all appeals, in whole or in part. In appropriate cases the Office of the General Counsel may refer appeals to the Commission for determination. No opportunity for personal appearance, oral argument, or hearing on appeal is provided. Upon receipt of an appeal, the Office of FOIA Services ordinarily will send the requester an acknowledgment letter that confirms receipt of the requester's appeal.

(6) *Determinations on appeals.* A determination on an appeal must be made in writing. A determination that denies an appeal, in whole or in part, shall include a brief explanation of the basis for the denial, identify the applicable FOIA exemptions asserted, and describe why the exemptions apply. As applicable, the determination will provide the requester with notification of the statutory right to file a lawsuit in accordance with 5 U.S.C. 552(a)(4), and will inform the requester of the mediation services offered by the Office of Government Information Services as a non-exclusive alternative to litigation. If the Office of FOIA Services' determination is remanded or modified on appeal, the Office of the General Counsel will notify the requester of that determination in writing.

(g) *Fees*—(1) *In general.* The Office of FOIA Services shall charge fees for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines, except where fees are limited under paragraph (g)(4) of this section or when a waiver or reduction is granted under paragraph (g)(12) of this section. To resolve any fee issues that arise under this section, the Office of FOIA Services may contact a requester for additional information. The Office of FOIA Services shall ensure that searches, review, and duplication are conducted in an efficient manner. The Office of FOIA Services ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check, certified check, or money order, or where possible, by electronic payment.

(2) *Definitions.* For purposes of this section:

(i) *Commercial use request* is a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. The Office of FOIA Services will determine whether to place a requester in the commercial use category on a case-by-case basis based on the requester's intended use of the information.

(ii) *Direct costs* are those expenses the Office of FOIA Services and any staff within the divisions and offices of the Commission incur in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include the salary of the employee(s) performing the work (*i.e.,* the basic rate of pay for the employee(s), plus 16% of that rate to cover benefits), the cost of materials, and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility in which the service is performed.

(iii) *Duplication* is reproducing a record, or the information contained in it, to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others. The Office of FOIA Services shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(iv) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with the requester's role at the educational institution and that the records are not sought for commercial or personal use.

(v) *Noncommercial scientific institution* is an institution that is not operated to further a commercial, trade, or profit interest and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(vi) *Representative of the news media* or *news media requester* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public.

(vii) *Review* is the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes doing all that is necessary to prepare the record for disclosure, such as redacting the record and marking any applicable exemptions. Review time also includes time spent obtaining and considering formal objections to disclosure made by a submitter under § 200.83, but it does not include time spent resolving legal or policy issues regarding the application of exemptions.

(viii) *Search* is the review, manually or by automated means, of agency records for the purpose of locating those records that are responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(3) *Charging fees.* In responding to FOIA requests, the Office of FOIA Services shall charge fees for the services summarized in chart form in paragraph (g)(3)(i) of this section and explained in paragraphs (g)(3)(ii) through (v) of this section, unless fees are limited under paragraph (g)(4) of this section or a waiver or reduction of fees has been granted under paragraph (g)(12) of this section.

(i) The four categories of requesters and the chargeable fees for each are:

Requester category	Search fees	Review fees	Duplication fees
(A) Commercial use requesters	Yes	Yes	Yes.
(B) Educational and noncommercial scientific institutions.	No	No	Yes (first 100 pages, or equivalent volume, free).
(C) Representatives of the news media	No	No	Yes (first 100 pages, or equivalent volume, free).
(D) All other requesters	Yes (first 2 hours free)	No	Yes (first 100 pages, or equivalent volume, free).

(ii) *Search fees.* (A) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (g)(4) of this section. The Office of FOIA Services may charge for time spent searching even if no responsive records are located or it is determined that the records are entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by agency employees.

(B) Requesters shall be charged the direct costs associated with conducting any search that requires the creation of a new computer program to locate or identify responsive records. Requesters shall be notified of the costs associated with creating and implementing such a program and must agree to pay the associated costs before the costs may be incurred.

(C) For requests that require the retrieval of agency records stored at a Federal records center operated by the National Archives and Records Administration (''NARA''), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(iii) *Review fees.* Review fees shall be charged to requesters who make commercial use requests. Review fees shall be assessed in connection with the initial review of the record, *i.e.,* the review agency employees conduct to determine whether an exemption applies to a particular record or portion of a record. Also, if an exemption asserted to withhold a record (or a portion thereof) is deemed to no longer apply, any costs associated with the re-review of the records to consider the use of other exemptions may be assessed as review fees. Review fees shall be the direct costs of conducting the review by the involved employees. Review fees can be charged even if the records reviewed ultimately are not disclosed.

(iv) *Search and review services (review applies to commercial-use requesters only).* (A) The Office of FOIA Services will establish and charge average rates for the groups of employees' salary grades typically involved in the search and review of records. Those groups will consist of employees at:

(*1*) Grades SK–8 or below;

(*2*) Grades SK–9 to SK–13; and

(*3*) Grades SK–14 or above.

(B) The average rates will be based on the hourly salary (*i.e.,* basic salary plus locality payment), plus 16 percent for benefits, of employees who routinely perform search and review services. The average hourly rates are listed on the FOIA web page of the Commission's website at *http://www.sec.gov* and will be updated as salaries change. Fees will be charged in quarter-hour increments. No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(v) *Duplication fees.* Duplication fees shall be charged to all requesters, subject to the limitations of paragraph (g)(4) of this section. Fees for either a photocopy or printout of a record (no more than one copy of which need be supplied) are identified on the FOIA web page of the Commission's website at *www.sec.gov.* For copies of records produced on tapes, disks, or other media, the Office of FOIA Services shall charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For all other forms of duplication, the Office of FOIA Services shall also charge the direct costs.

(4) *Limitations on charging fees.* (i) No search or review fees will be charged for requests by educational institutions (unless the requests are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.

(ii) Except for requesters seeking records for a commercial use, the Office of FOIA Services shall provide without charge the first 100 pages of duplication (or the cost equivalent for other media) and the first two hours of search.

(iii) Fees will not be charged where the costs of collecting and processing the fee are likely to equal or exceed the amount of the fee.

(iv) The Office of FOIA Services will not assess search fees (or, in the case of requests from representatives of the news media or educational or noncommercial scientific institutions, duplication fees) when 5 U.S.C. 552(a)(4)(A)(viii) prohibits the assessment of those fees.

(5) *Notice of anticipated fees.* (i) When the Office of FOIA Services determines or estimates that the fees to be assessed in accordance with this section will exceed the amount it would cost the Office of FOIA Services to collect and process the fees, the Office of FOIA Services shall notify the requester of the actual or estimated amount of fees, unless the requester has indicated a willingness to pay fees as high as the estimated fees. If only a portion of the fee can be estimated readily, the Office of FOIA Services shall advise the requester accordingly. If the requester is not a commercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge.

(ii) In cases in which a requester has been notified that the actual or estimated fees will amount to more than it would cost the Office of FOIA Services to collect and process the fees, or amount to more than the amount the requester indicated a willingness to pay, the Office of FOIA Services will do no further work on the request until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a requester who is not a commercial use requester, designates that the requester seeks only that which can be provided by the statutory entitlements. The Office of FOIA Services will toll the response period while it notifies the requester of the actual or estimated amount of fees and this time will be excluded from the 20 working day time

limit (as specified in paragraph (d)(2) of this section). The requester's agreement to pay fees must be made in writing, must designate an exact dollar amount the requester is willing to pay, and must be received within 30 calendar days from the date of the notification of the fee estimate. If the requester fails to submit an agreement to pay the anticipated fees within 30 calendar days from the date of the Office of FOIA Services' fee notice, the Office of FOIA Services will presume that the requester is no longer interested in the records and notify the requester that the request has been closed.

(iii) The Office of FOIA Services shall make available their FOIA Public Liaisons or other FOIA professionals to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(6) *Charges for other services.* Although not required to provide special services, if the Office of FOIA Services chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged. Examples of such special services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail. The cost for the attestation of records with the Commission seal (*i.e.,* certifying records as true copies) is $4.00 per record, which may be waived for records certified electronically. Requests for certified copies of records or documents shall ordinarily be serviced within 20 working days. Requests will be processed in the order in which they are received.

(7) *Charging interest.* The Office of FOIA Services may begin to charge interest on any unpaid bill starting on the 31st calendar day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and accrue from the date of the billing until the payment is received. The Office of FOIA Services shall take all steps authorized by the Debt Collection Act of 1982, as amended, and the Commission's Rules Relating to Debt Collection to effect payment, including offset, disclosure to consumer reporting agencies, and use of collection agencies.

(8) *Aggregating requests.* If the Office of FOIA Services reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Office of FOIA Services may aggregate those requests and charge accordingly. Among the factors the Office of FOIA Services shall consider in deciding whether to aggregate are whether the requests were submitted close in time and whether the requests seek documents about related matters. The Office of FOIA Services may presume that multiple requests that involve related matters made by the same requester or a group of requesters within a 30 calendar day period have been made to avoid fees. For requests separated by a longer period, the Office of FOIA Services will aggregate them only where it determines that aggregation is warranted in view of all the circumstances involved.

(9) *Advance payments.* (i) For requests other than those described in paragraphs (g)(9)(ii) and (iii) of this section, the Office of FOIA Services shall not require a requester to make advance payment (*i.e.,* payment made before the Office of FOIA Services begins to process or continues to work on a request). Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(ii) When the Office of FOIA Services determines or estimates that a total fee to be charged under this section will exceed $250.00, it shall notify the requester of the actual or estimated fee and may require the requester to make an advance payment of the entire anticipated fee before beginning to process the request. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with the Office of FOIA Services' FOIA Public Liaisons or other FOIA professionals to modify the request in an effort to meet the requester's needs at a lower cost.

(iii) When a requester has previously failed to pay a properly charged FOIA fee to the Office of FOIA Services or other Federal agency within 30 calendar days of the date of billing, the Office of FOIA Services shall notify the requester that he or she is required to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the Office of FOIA Services begins to process a new request or continues processing a pending request from that requester. Where the Office of FOIA Services has a reasonable basis to believe that a requester has misrepresented the requester's identity to avoid paying outstanding fees, it may require that the requester provide proof of identity and pay in advance.

(iv) When the Office of FOIA Services requires advance payment or payment due under paragraphs (g)(9)(ii) and (iii) of this section, the Office of FOIA Services will not further process the request until the required payment is made. The Office of FOIA Services will toll the processing of the request while it notifies the requester of the advanced payment due and this time will be excluded from the 20 working day time limit (as specified in paragraph (d)(2) of this section). If the requester does not pay the advance payment within 30 calendar days from the date of the Office of FOIA Services' fee notice, the Office of FOIA Services will presume that the requester is no longer interested in the records and notify the requester that the request has been closed.

(10) *Tolling.* When necessary for the Office of FOIA Services to clarify issues regarding fee assessment with the requester, the time limit for responding to a FOIA request is tolled until the Office of FOIA Services resolves such issues with the requester.

(11) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute (except the FOIA) that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the Office of FOIA Services shall inform the requester how to obtain records from that program. Provision of such records is not handled under the FOIA.

(12) *Requirements for waiver or reduction of fees.* (i) Records responsive to a request will be furnished without charge, or at a charge reduced below that established under paragraph (g)(3) of this section, if the requester asks for such a waiver in writing and the Office of FOIA Services determines, after consideration of information provided by the requester, that the requester has demonstrated that:

(A) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Disclosure of the information is not primarily in the commercial interest of the requester.

(ii) In deciding whether disclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, the Office of FOIA Services shall consider each of the following four factors:

(A) *The subject of the request:* whether the subject of the requested records concerns the operations or activities of the government. The subject of the requested records must concern identifiable operations or activities of

the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(B) *The informative value of the information to be disclosed:* whether the disclosure is likely to contribute to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding.

(C) *The contribution to an understanding of the subject by the public likely to result from disclosure:* whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media satisfies this consideration.

(D) *The significance of the contribution to public understanding:* whether the disclosure is likely to contribute significantly to public understanding of government operations or activities. The public's understanding of the subject in question prior to the disclosure must be significantly enhanced by the disclosure.

(iii) In deciding whether disclosure of the requested information is primarily in the commercial interest of the requester, the Office of FOIA Services shall consider the following factors:

(A) *The existence and magnitude of a commercial interest:* whether the requester has a commercial interest that would be furthered by the requested disclosure. The Office of FOIA Services shall consider any commercial interest of the requester (with reference to the definition of ''commercial use requester'' in paragraph (g)(2)(i) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(B) *The primary interest in disclosure:* whether the public interest is greater than any identified commercial interest in disclosure. The Office of FOIA Services ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(iv) If only a portion of the requested records satisfies both the requirements for a waiver or reduction of fees, a waiver or reduction of fees will be granted for only that portion.

(v) Requests for a waiver or reduction of fees should address all the factors identified in paragraphs (g)(12)(ii) and (iii) of this section.

(vi) Denials of requests for a waiver or reduction of fees are adverse determinations (as defined in paragraph (e)(2)(iii) of this section) and may be appealed to the General Counsel in accordance with the procedures set forth in paragraph (f) of this section.

§ 200.80a [Removed]

■ 3. Remove § 200.80a.

§ 200.80b [Removed]

■ 4. Remove § 200.80b.

§ 200.80c [Removed]

■ 5. Remove § 200.80c.

§ 200.80d [Removed]

■ 6. Remove § 200.80d.

§ 200.80e [Removed]

■ 7. Remove § 200.80e.

§ 200.80f [Removed]

■ 8. Remove § 200.80f.

By the Commission.

Dated: June 25, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–13943 Filed 6–27–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–2018–0016]

RIN 2125–AF82

Addition to the National Network

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FHWA is approving the addition of Sheridan Boulevard (NY 895) to the National Network (NN) and revising its regulations to reflect the addition. The facility currently known as ''Interstate-895 Sheridan Expressway'' in New York City, located in Bronx County, will be reconstructed, removed from the National System of Interstate and Defense Highways (Interstate System) to accommodate new design features, and classified as an ''Urban Principal Arterial—Other.'' This facility will be identified as the ''Sheridan Boulevard (NY 895).''

DATES: This rule is effective July 30, 2018.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Ms. Caitlin Hughes, FHWA Office of Freight Management and Operations, (202) 493–0457. For legal information, contact Mr. William Winne, Office of Chief Counsel, (202) 366–1397. Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *www.regulations.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may also be downloaded by accessing the Office of the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Publishing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

The NN consists of Interstate System routes (except exempted routes) and those non-Interstate System routes added through the rulemaking process. See 49 U.S.C. 31111(e)–(f) and 31113(e); 23 CFR part 658 Appendix A; see also 49 FR 23302 (June, 5, 1984). To ensure that the NN remains substantially intact, FHWA retains the authority to rule upon all requests for additions to, and deletions from, the NN as well as requests for the imposition of certain restrictions. Pursuant to 23 CFR 658.11, requests for additions to the NN must be submitted in writing to the appropriate FHWA Division Office and endorsed by the Governor or the Governor's authorized representative. Proposals for addition of routes to the NN must also be accompanied by an analysis of suitability based on the criteria in 23 CFR 658.9. Once a non-Interstate

System route is added to the NN, it is included in Appendix A of 23 CFR part 658—National Network—Federally Designated Routes.

On November 10, 2017, FHWA received a request from the New York State Department of Transportation (NYSDOT) proposing a modification to the Interstate System. The request, available in the rulemaking docket, proposes the de-designation (removal from the Interstate System) of the Sheridan Expressway (I–895), approximately a 1.3-mile Interstate between the Bruckner Expressway (I–278) and the Cross Bronx Expressway (I–95). As part of the de-designation, the State also proposes the functional reclassification of this highway segment from an Interstate to ''Urban Principal Arterial—Other'' and to rename the road Sheridan Boulevard (NY–895). The physical alignment of the highway would be maintained, and it would therefore continue to provide the same access for commercial vehicles as currently exists. The FHWA intends to act on this request pursuant to its regulatory authority on revisions to the Interstate System (23 CFR 470.115(a) and 23 CFR 658.11(d)) and guidance on Interstate System de-designations (*https://www.fhwa.dot.gov/planning/national_highway_system/interstate_highway_system/withdrawalqa.cfm*).

The NYSDOT intends to keep Sheridan Boulevard (NY–895) in the NN. Because the route would no longer be in the Interstate System, it must be added to NN as a non-Interstate System route and be listed in 23 CFR part 658 Appendix A. The NYSDOT proposal included the required analysis of suitability based on the criteria in 23 CFR 658.9, which includes a crash analysis and safety study, and also documents effects on Interstate commerce, effects on alternate routes, effects on traffic operations, and consultation with local governments.

The FHWA reviewed NYSDOT's proposal and affirms that the request to add a route to the NN is consistent with 23 CFR 658.9 and 658.11 with respect to the criteria for the NN and the procedures for additions to the NN. The FHWA published a Notice of Proposal Rulemaking at 83 FR 15524 on April 11, 2018, proposing to approve the addition of Sheridan Boulevard (NY 895) to the NN and to revise existing regulations (23 CFR part 658 Appendix A) to reflect the addition. The FHWA did not receive any comments to the NPRM and is adopting the changes as proposed.

Rulemaking Analyses and Notices

As the Sheridan Expressway is already part of the NN due to its Interstate designation, FHWA has determined there would be no substantive impact to the public resulting from the addition of the reconstructed facility, Sheridan Boulevard, to the NN.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 and is not significant within the meaning of DOT regulatory policies and procedures. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It is anticipated that the economic impact of this rulemaking would be minimal. These changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required. Finally, this rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. This action does not affect any funding distributed under any of the programs administered by FHWA. For these reasons, FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, dated May 18, 2001. We have determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause any environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

National Environmental Policy Act

The Agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants program—transportation, Highways and roads, Motor carriers.

Issued on: June 21, 2018.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA amends 23 CFR part 658, as set forth below:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

■ 1. The authority citation for part 658 continues to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; sec. 347, Pub. L. 108–7, 117 Stat. 419; sec. 756, Pub L. 109–59, 119 Stat. 1219; sec. 115, Pub. L. 109–115, 119 Stat. 2408; 49 CFR 1.48(b)(19) and (c)(19).

■ 2. Amend Appendix A to Part 658 by adding an entry to the end of the New York portion of the table to read as follows:

Appendix A to Part 658—National Network—Federally-Designated Routes

* * * * *

Route	From	To
* * *	* * *	* * *
New York		
* * *	* * *	* * *
Sheridan Boulevard (NY 895)	I–278 Bruckner Expressway	I–95 Cross Bronx Expressway.
* * *	* * *	* * *

[FR Doc. 2018–13903 Filed 6–27–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions and Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Iranian Transactions and Sanctions Regulations (ITSR) to implement the President's May 8, 2018 decision to end the United States' participation in the Joint Comprehensive Plan of Action (JCPOA) on Iran's nuclear program, as outlined in National Security Presidential Memorandum-11 of May 8, 2018 (NSPM–11). Specifically, OFAC is amending the ITSR to: Amend the general licenses authorizing the importation into the United States of, and dealings in, Iranian-origin carpets and foodstuffs, as well as related letters of credit and brokering services, to narrow the scope of such general licenses to the wind down of such activities through August 6, 2018; add a new general license to authorize the wind down, through August 6, 2018, of transactions related to the negotiation of contingent contracts for activities eligible for authorization under the *Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services,* which was rescinded following the issuance of NSPM–11; and add a new general license to authorize the wind down, through November 4, 2018, of certain transactions relating to foreign entities owned or controlled by a United States person.

DATES: *Effective Date:* June 27, 2018.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (*www.treasury.gov/ofac*).

Background

On May 8, 2018, the President issued NSPM–11, which set forth his decision to end the United States' participation in the JCPOA. In NSPM–11, the

President directed the Secretary of State and the Secretary of the Treasury to immediately begin taking steps to re-impose all United States sanctions lifted or waived in connection with the JCPOA as expeditiously as possible, and in no case later than 180 days from the date of NSPM–11. Today, OFAC is amending the ITSR, 31 CFR part 560, to issue wind-down authorizations for activities involving Iran that were previously authorized by OFAC in connection with the U.S. sanctions relief provided for under the JCPOA. In conjunction with this action, OFAC has revoked General License H and General License I, two authorizations for activities involving Iran that were previously issued by OFAC in connection with the U.S. sanctions relief provided for under the JCPOA.

On January 16, 2016, OFAC issued General License H to license certain transactions relating to foreign entities owned or controlled by a United States person. At the time of its issuance, General License H was posted on OFAC's website (*www.treasury.gov/ofac*).

Also on January 16, 2016, OFAC issued a *Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services* (JCPOA SLP). At the time of its issuance, the JCPOA SLP was posted on OFAC's website (*www.treasury.gov/ofac*). Following the issuance of NSPM–11, OFAC rescinded the JCPOA SLP and posted an archived version of the JCPOA SLP on its website for reference purposes.

On January 21, 2016, OFAC amended the ITSR to license the importation into the United States of certain Iranian-origin carpets and foodstuffs, including pistachios and caviar (81 FR 3330). Specifically, OFAC added § 560.534 to the ITSR to authorize by general license the importation into the United States of, and dealings in, certain Iranian-origin foodstuffs and carpets from Iran or a third country. OFAC also added § 560.535 to the ITSR to authorize by general license certain letters of credit and brokering services relating to certain Iranian-origin foodstuffs and carpets.

On March 24, 2016, OFAC issued General License I to authorize certain transactions related to the negotiation of, and entry into, contingent contracts for activities eligible for authorization under the JCPOA SLP. At the time of its issuance, General License I was posted on OFAC's website (*www.treasury.gov/ofac*).

Today, OFAC is amending the ITSR to implement the wind-down authorizations for the above-referenced activities involving Iran that were previously authorized by OFAC pursuant to the ITSR in connection with the U.S. sanctions relief provided for under the JCPOA.

First, OFAC is amending § 560.534 to narrow the scope of that general license to authorize, through 11:59 p.m. eastern daylight time on August 6, 2018, only the wind down of transactions related to the importation into the United States of, and dealings in, certain Iranian-origin foodstuffs and carpets. U.S. persons will be authorized to engage in all transactions and activities that are ordinarily incident and necessary to the wind down of transactions that were previously authorized under § 560.534. After 11:59 p.m. eastern daylight time on August 6, 2018, no further transactions are authorized under amended § 560.534.

OFAC is also amending § 560.535 to narrow the scope of that general license to authorize, through 11:59 p.m. eastern daylight time on August 6, 2018, only the wind down of transactions related to letters of credit and brokering services relating to certain Iranian-origin foodstuffs and carpets. U.S. persons will be authorized to engage in all transactions and activities that are ordinarily incident and necessary to the wind down of transactions that were previously authorized under § 560.535. After 11:59 p.m. eastern daylight time on August 6, 2018, no further transactions are authorized under amended § 560.535.

In addition, OFAC is adding § 560.536 to authorize, through 11:59 p.m. eastern daylight time on August 6, 2018, all transactions and activities that are ordinarily incident and necessary to the wind down of transactions related to the negotiation of contingent contracts for activities that were, at the time of the negotiation, eligible for authorization under the JCPOA SLP. This wind-down authorization enables U.S. persons to wind down, through August 6, 2018, activities that were previously authorized pursuant to General License I. In conjunction with this action, OFAC has revoked General License I and has posted an archived version of General License I on its website (*www.treasury.gov/ofac*) for reference purposes. After 11:59 p.m. eastern daylight time on August 6, 2018, no further transactions are authorized under § 560.536.

Finally, OFAC is adding § 560.537 to authorize, through 11:59 p.m. eastern standard time on November 4, 2018, all transactions and activities that are ordinarily incident and necessary to the wind down of transactions relating to foreign entities owned or controlled by a United States person that were previously authorized under General License H. In conjunction with this action, OFAC has revoked General License H and has posted an archived version of General License H on its website (*www.treasury.gov/ofac*) for reference purposes. After 11:59 p.m. eastern standard time on November 4, 2018, no further transactions are authorized under § 560.537.

Public Participation

Because the amendment of the ITSR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the ITSR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Aircraft, Banks, Banking, Carpet, Civil aviation, Foodstuffs, Iran, Letters of credit.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR chapter V as follows:

PART 560—IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS

■ 1. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); Pub. L. 112–81, 125 Stat. 1298 (22 U.S.C. 8513a); Pub. L. 112–158, 126 Stat. 1214 (22 U.S.C. 8701–8795); E.O. 12613, 52 FR 41940,

3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13628, 77 FR 62139, 3 CFR, 2012 Comp., p. 314.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Revise § 560.534 to read as follows:

§ 560.534 Winding down of transactions related to the importation into the United States of, and dealings in, certain foodstuffs and carpets.

(a) Except as provided in paragraphs (b) and (c) of this section, all transactions and activities that are ordinarily incident and necessary to the wind down of the following activities are authorized through 11:59 p.m. eastern daylight time on August 6, 2018:

(1) The importation into the United States, from Iran or a third country, of the following goods of Iranian origin:

(i) Foodstuffs intended for human consumption that are classified under chapters 2–23 of the Harmonized Tariff Schedule of the United States; and

(ii) Carpets and other textile floor coverings and carpets used as wall hangings that are classified under chapter 57 or heading 9706.00.0060 of the Harmonized Tariff Schedule of the United States.

(2) United States persons, wherever located, engaging in transactions or dealings in or related to the categories of Iranian-origin goods described in paragraph (a)(1) of this section, provided that the transaction or dealing does not involve or relate to goods, technology, or services for exportation, reexportation, sale, or supply, directly or indirectly, to Iran, the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211, other than services described in § 560.405 (''Transactions ordinarily incident to a licensed transaction authorized'') and transfers of funds described in § 560.516 (''Transfers of funds involving Iran'').

(b) This general license does not authorize the importation into the United States of goods that were under seizure or detention by the Department of Homeland Security, as of January 21, 2016, pursuant to Customs regulations or other applicable provisions of law, until any applicable penalties, charges, duties, or other conditions are satisfied. This general license does not authorize the importation into the United States of goods for which forfeiture proceedings have commenced or of goods that have been forfeited to the U.S. Government, other than through U.S. Customs and Border Protection disposition, including by selling at auction.

(c) Nothing in this section authorizes debits or credits to Iranian accounts, as defined in § 560.320.

■ 3. Revise § 560.535 to read as follows:

§ 560.535 Winding down of transactions related to letters of credit and brokering services relating to certain foodstuffs and carpets.

(a) *Wind down.* Except as provided in paragraph (b) of this section, all transactions and activities that are ordinarily incident and necessary to the wind down of the following activities are authorized through 11:59 p.m. eastern daylight time on August 6, 2018:

(1) *Purchases from Iran or the Government of Iran or certain other blocked persons.* United States depository institutions issuing letters of credit in favor of a beneficiary in Iran, the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211 to pay for purchases from Iran or the Government of Iran of the categories of Iranian-origin goods described in § 560.534(a)(1), provided that such letters of credit are not advised, negotiated, paid, or confirmed by the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211.

(2) *Transactions or dealings in Iranian-origin goods located in third countries, other than purchases from the Government of Iran or certain other blocked persons.* United States depository institutions issuing, advising, negotiating, or confirming letters of credit to pay for transactions in or related to Iranian-origin goods described in § 560.534(a)(1) and located in a third-country, other than purchases from the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211, provided that such letters of credit are not issued, advised, negotiated, paid, or confirmed by the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211.

(3) *Brokering.* United States persons, wherever located, acting as brokers for the purchase or sale of the categories of Iranian-origin goods described in § 560.534(a)(1), provided that the goods are not for exportation, reexportation, sale, or supply, directly or indirectly, to Iran, the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211.

(b) *Iranian accounts.* Nothing in this section authorizes debits or credits to Iranian accounts, as defined in § 560.320.

Note 1 to § 560.535: See §§ 560.304 and 560.313 for information relating to individuals and entities that are included within the definition of the term *Government of Iran* and § 560.324 regarding entities included within the definition of the term *Iranian financial institution.* See § 560.516 for information relating to authorized transfers to Iran by U.S. depository institutions relating to licensed transactions.

■ 4. Add § 560.536 to subpart E to read as follows:

§ 560.536 Winding down of transactions related to the negotiation of contingent contracts for activities eligible for authorization under the Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services.

(a) All transactions and activities that are ordinarily incident and necessary to the wind down of the following activities are authorized through 11:59 p.m. eastern daylight time on August 6, 2018: U.S. persons engaging in all transactions ordinarily incident to the negotiation of contingent contracts for activities that were, at the time of the negotiation, eligible for authorization under the now-rescinded *Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services* (JCPOA SLP).

Note 1 to paragraph (a): OFAC has posted an archived copy of the JCPOA SLP on its website (*www.treasury.gov/ofac*) for reference purposes.

(b) Nothing in paragraph (a) of this section authorizes the exportation, reexportation, sale, or supply, directly or indirectly, of any goods or technology to Iran, the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211.

(c) For purposes of this section, the term ''contingent contract'' means a contract where the performance of the contract is made expressly contingent upon the issuance of a specific license by the Office of Foreign Assets Control authorizing the activities to be performed. For purposes of this section, the term ''contingent contract'' includes executory contracts, executory pro forma invoices, agreements in principle,

executory offers capable of acceptance such as bids or proposals in response to public tenders, binding memoranda of understanding, or any other similar agreement.

■ 5. Add § 560.537 to subpart E to read as follows:

§ 560.537 Winding down of transactions relating to foreign entities owned or controlled by a U.S. person.

(a) Except as provided in paragraph (c) of this section, all transactions and activities that are ordinarily incident and necessary to the wind down of the following activities are authorized through 11:59 p.m. eastern standard time on November 4, 2018: an entity owned or controlled by a United States person and established or maintained outside the United States (a ''U.S.-owned or -controlled foreign entity'') engaging in transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would otherwise be prohibited by § 560.215.

(b) All transactions and activities that are ordinarily incident and necessary to the wind down of the following activities are authorized through 11:59 p.m. eastern standard time on November 4, 2018: A United States person engaging in the following:

(1) Activities related to the establishment or alteration of operating policies and procedures of a United States entity or a U.S.-owned or -controlled foreign entity, to the extent necessary to allow a U.S.-owned or -controlled foreign entity to engage in transactions authorized in paragraph (a) of this section; and

(2) Activities to make available to those foreign entities that the U.S. person owns or controls any automated and globally integrated computer, accounting, email, telecommunications, or other business support system, platform, database, application, or server necessary to store, collect, transmit, generate, or otherwise process documents or information related to transactions authorized in paragraph (a) of this section.

Note 1 to paragraph (b): See § 560.208 for prohibitions on facilitation by United States persons, which remain in effect, with the exception of activities authorized in paragraph (b) of this section.

(c) Paragraph (a) of this section does not authorize transactions involving:

(1) The exportation, reexportation, sale, or supply, directly or indirectly, from the United States of any goods, technology, or services prohibited by § 560.204 or the reexportation from a third country of any goods, technology, or services prohibited by § 560.205;

(2) Any transfer of funds to, from, or through a United States depository institution or a United States-registered broker or dealer in securities;

(3) Any person on OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List), or any activity that would be prohibited by any part of 31 CFR chapter V other than part 560 if engaged in by a United States person or in the United States;

(4) Any person identified on the List of Foreign Sanctions Evaders pursuant to Executive Order 13608;

(5) Any activity involving any item (including information) subject to the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), that is prohibited by, or otherwise requires a license under, part 744 of the EAR; or participation in any transaction involving a person whose export privileges have been denied pursuant to part 764 or 766 of the EAR, without authorization from the Department of Commerce;

(6) Any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any official, agent, or affiliate thereof;

(7) Any activity that is sanctionable under Executive Order 12938 or 13382 (relating to Iran's proliferation of weapons of mass destruction and their means of delivery, including ballistic missiles); Executive Order 13224 (relating to international terrorism); Executive Order 13572 or 13582 (relating to Syria); Executive Order 13611 (relating to Yemen); or Executive Order 13553 or 13606, or section 2 or 3 of Executive Order 13628 (relating to Iran's commission of human rights abuses against its citizens); or

(8) Any nuclear activity involving Iran that is subject to the procurement channel established pursuant to paragraph 16 of the United Nations Security Council Resolution 2231 (2015) and Section 6 of Annex IV to the Joint Comprehensive Plan of Action of July 14, 2015 and that has not been approved through that procurement channel process.

(d)(1) For purposes of paragraph (b)(2) of this section, the term ''automated'' refers to a computer, accounting, email, telecommunications, or other business support system, platform, database, application, or server that operates passively and without human intervention to facilitate the flow of data between and among the United States person and its owned or controlled foreign entities.

(2) For purposes of paragraph (b)(2) of this section, the term ''globally integrated'' refers to a computer, accounting, email, telecommunications, or other business support system, platform, database, application, or server that is available to, and in general use by, the United States person's global organization, including the United States person and its owned or controlled foreign entities.

(3) Paragraph (b)(2) of this section does not authorize the use of any automated computer, accounting, email, telecommunications, or other business support system, platform, database, application, or server in connection with any transfer of funds to, from, or through a United States depository institution or a United States-registered broker or dealer in securities.

Dated: June 25, 2018.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–13939 Filed 6–27–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0316]

RIN 1625–AA08

Special Local Regulation; Gulf of Mexico; Sarasota, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of the Gulf of Mexico, in the vicinity of Lido Beach, Florida, during the 34th Annual Sarasota Powerboat Grand Prix High Speed Boat Race. Approximately 35 boats and jet skis, traveling at speeds in excess of 100 miles per hour are expected to participate. Additionally, it is anticipated that 300 spectator vessels will be present along the race course. The special local regulation is necessary to protect the safety of race participants, participant vessels, spectators, and the general public on navigable waters of the United States during the event. The special local regulation will establish an enforcement area where all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within without obtaining permission from the Captain of the Port St. Petersburg or a designated representative.

DATES: This rule is effective daily from 8 a.m. until 6 p.m. on June 29, 2018 through July 1, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0316 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician First Class Michael Shackleford, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Michael.d.shackleford@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background Information and Regulatory History

The Coast Guard is establishing this special local regulation without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Insufficient time remains to publish an NPRM and to receive public comments, as the Sarasota Powerboat Grand Prix event will occur before the rulemaking process would be completed. Because of the dangers associated with high speed boat races, the regulation is necessary to provide for the safety of event participants, spectators, and vessels transiting the event area. For those reasons, it would be impracticable to publish an NPRM.

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

III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to provide for the safety of life on navigable waters of the United States during the Sarasota Powerboat Grand Prix High Speed Boat Race.

IV. Discussion of the Rule

This rule establishes a special local regulation that will encompass certain waters of the Gulf of Mexico, Lido Beach, Florida. The special local regulation will be enforced daily from 8 a.m. to 6 p.m. on June 29, 2018 through July 1, 2018. The special local regulation will establish an enforcement area where all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within without obtaining permission from the COTP St. Petersburg or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port (COTP) St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the COTP St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP St. Petersburg or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners and/or Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) The special local regulation will be enforced for only ten hours on two days; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the regulated area without authorization from the COTP St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the regulated area or anchor in the sponsor's designated spectator area(s), during the enforcement period if authorized by the COTP St. Petersburg or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and/or Broadcast Notice to Mariners.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.35T07–0316 to read as follows:

§ 100.35T07–0316 Special Local Regulations; Sarasota Powerboat Grand Prix, Gulf of Mexico; Lido Beach, FL.

(a) *Location.* The following regulated area is established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Enforcement area.* All waters of the Gulf of Mexico contained within the following points: 27°18′44″ N, 82°36′14″ W, thence to position 27°19′09″ N, 82°35′13″ W, thence to position 27°17′42″ N, 82°34′00″ W, thence to position 27°16′43″ N, 82°34′49″ W, thence back to the original position, 27°18′44″ N, 82°36′14″ W.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area unless an authorized by the COTP St. Petersburg or a designated representative.

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the COTP St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP St. Petersburg or a designated representative.

(4) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners and/or Broadcast Notice to Mariners.

(d) *Enforcement period.* This rule will be enforced daily from 8 a.m. to 6 p.m. on June 29, 2018 through July 1, 2018.

H.L. Najarian,

Captain, U.S. Coast Guard, Captain of the Port Saint Petersburg.

[FR Doc. 2018–13912 Filed 6–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0340]

RIN 1625–AA08

Special Local Regulation; Corpus Christi Bay, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain navigable waters of Corpus Christi Bay. This action is necessary to protect marine event

participants, spectators and transiting vessels on these navigable waters during the Youth World's Championship regatta held at the Corpus Christi Yacht Club. Entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi or designated representative.

DATES: This rule is effective from 7 a.m. on July 14, 2018 through 3 p.m. on July 21, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0340 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Kevin Kyles, Waterways Management Division, U.S. Coast Guard; telephone 361–939–5125, email *Kevin.L.Kyles@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Corpus Christi
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. This safety zone must be established by July 14, 2018 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the special local regulation until after the scheduled date of the regatta and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is necessary to ensure the safety of persons and vessels during the regatta.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the vessel traffic occurring on July 14, 2018 through July 21, 2018 will be a safety concern for participants within the boating course. Potential hazards include risk of injury or death resulting from near or actual contact among participant vessels and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. The purpose of this rule is to ensure safety of participants, spectators, and transiting vessels in the regulated area before, during, and after the Youth World's Championship regatta.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation from 6:15 a.m. through 3 p.m. each day from July 14, 2018 through July 21, 2018 in Corpus Christi Bay, approximately 3,000 feet east of People's Street T-Head in Corpus Christi, TX. The regatta will be inside a rectangular area with the most northwestern point located at 27°47′31″ N, 97°22′33.05″ W, most northeastern point located at 27°47′29.46″ N, 97°19′44.26″ W, most southeastern point located at 27°46′12.06″ N, 97°19′44.78″ W, and the most southwestern located at 27°46′09.55″ N, 97°22′28.78″ W. The duration of the special local regulation is intended to protect the public from potential navigation hazards before, during, and after the event. No vessel or person is permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

Spectator vessels desiring to enter, transit through or within, or exit the regulated area may do so only with permission from the COTP or a designated representative, and when permitted, must operate at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel. Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel.

The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative can terminate enforcement of the special local regulations at the conclusion of the event.

The COTP or a designated representative would inform the public of the enforcement times for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action'' under Executive Order 12866. Accordingly, this rule has

not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, duration, and time-of-day for the special local regulation. Vessel traffic will be able to safely navigate around the regulated area, which will impact only a small portion of the Laguna Madre for 3 hours and 15 minutes on one day. Moreover, the Coast Guard will issue Broadcast Notices to Mariners (BNMs) via VHF–FM marine channel 16 about the regulation so that waterway users may plan accordingly for transits during this restriction, and the rule allows vessels to seek permission from the COTP or a designated representative to enter the regulated area.

B. Impact on Small Entities

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

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is a special local regulation that limits daily access to certain navigable waters of Corpus Christi Bay over eight days. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.35T08–0340 to read as follows:

§ 100.35T08–0340 Special Local Regulation; Corpus Christi Bay, Corpus Christi, TX.

(a) *Location.* The following area is a special local regulation: All navigable waters inside approximate rectangular area from with the most northwestern point located at 27°47′31″ N, 97°22′33.05″ W, the most northeastern point being located at 27°47′29.46″ N, 97°19′44.26″ W, the most southeastern point located at 27°46′12.06″ N, 97°19′44.78″ W, and the most southwestern located at 27°46′09.55″ N, 97°22′28.78″ W, in Corpus Christi Bay, approximately 3,000 feet east of

People's Street T-Head in Corpus Christi, TX.

(b) *Effective period.* This section is effective from 6:15 a.m. on July 14, 2018 through 3 p.m. on July 21, 2018.

(c) *Enforcement period.* This section will be enforced from 6:15 a.m. through 3 p.m. during each day of the effective period.

(d) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the COTP or a designated representative and when so directed by that officer will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) Spectator vessels may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel.

(6) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(7) The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: June 21, 2018.

E.J. Gaynor

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2018–13898 Filed 6–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2017–1125]

RIN 1625–AA01

Anchorage Grounds; Saint Lawrence Seaway, Cape Vincent, New York

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing, at the request of the Saint Lawrence Seaway Development Corporation, two separate anchorage grounds, Carleton Island Anchorage and Tibbetts Point Anchorage, near Cape Vincent, New York. The Federal Anchorage Ground designations will enable a pilot to disembark a safely anchored vessel which will help reduce pilot fatigue, increase pilot availability, and reduce costs incurred by vessels transiting the Seaway.

DATES: This rule is effective July 30, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–1125 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Jason Radcliffe, Ninth District, Waterways Operations, U.S. Coast Guard; telephone 216–902–6060, email *jason.a.radcliffe2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AIS Automatic identification system
CFR Code of Federal Regulations
DHS Department of Homeland Security
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is establishing two anchorage grounds, one in the vicinity of Carleton Island, New York, and the second near Tibbetts Point, New York. Each area has historically been used as an anchorage and the Saint Lawrence Seaway Development Corporation, at the request of its waterway users, has requested each area to be officially designated as Federal Anchorage Grounds.

Without this designation, pilots who anchor a ship in the respective areas are unable to disembark during sustained delay periods which hinder compliance with rest requirements and complicate pilot availability and logistics for other vessels. On February 2, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Saint Lawrence Seaway Anchorages (83 FR 4882). The NPRM discussed the need for the rule and invited the public to comment on the proposed regulatory action related to this Anchorage Grounds establishment. During the comment period that ended May 3, 2018, we received two comments. One comment was not relevant to the proposed rule and the other comment expressed support of the proposal.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

The Coast Guard recognizes the need to establish two anchorage grounds, one in the vicinity of Carleton Island, New York and the second near Tibbetts Point, New York. Each area has historically been used as an anchorage and the Saint Lawrence Seaway Development Corporation, at the request of its waterway users, has requested each area to be officially designated as Federal Anchorage Grounds.Without this designation, pilots who anchor a ship in the respective areas are unable to disembark during sustained delay periods which hinder compliance with rest requirements and complicate pilot availability and logistics for other vessels.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published February 2, 2018. We made no changes to the regulatory text based on these comments, but we did clarify that our reference to the Captain of the Port was to the Captain of the Port Buffalo.

This rule establishes two new anchorage areas to be known as Carleton Island Anchorage and Tibbetts Point Anchorage.

The Carleton Island Anchorage will be located just northeast and adjacent to Carleton Island and Millen Bay. The boundaries of Carleton Island Anchorage are presented in the regulatory text at the end of this document. The anchorage will be approximately .75 square miles. Carleton Island Anchorage is primarily intended for use by up-bound inland or ocean going bulk freight and tank ships, towing vessels and barges that need to anchor and wait for the availability of a Lake Ontario Pilot. Under this rule no anchors would be allowed to be placed in the channel and no portion of the hull or rigging will be allowed to extend outside the limits of the anchorage area.

The Tibbetts Point Anchorage will be located just west and adjacent to Tibbetts Point and Fuller Bay. The boundaries of Tibbett's Point Anchorage are presented in the regulatory text at the end of this document. The anchorage will be approximately 1.5 square miles. Tibbett's Point Anchorage is primarily intended for use by down-bound inland or ocean going bulk freight and tank ships, towing vessels and barges that need to anchor and wait for the availability of a River Pilot. Under this rule no anchors will be allowed to be placed in the channel and no portion of the hull or rigging will be allowed to extend outside the limits of the anchorage area.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location and size of the anchorage grounds, as well as the historical automatic identification system (AIS) data. The impacts on routine navigation are expected to be minimal because the anchorage grounds are located outside the navigational channel. When not occupied, vessels would be able to maneuver in, around and through the anchorage.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of permanent anchorages near Carleton Island and Tibbetts Point, New York. It is categorically excluded from further review under paragraph L59(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental

Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 110.209 to read as follows:

§ 110.209 Saint Lawrence Seaway Anchorages, New York.

(a) *Carleton Island Anchorage; Saint Lawrence River, Cape Vincent, New York*—(1) *Carleton Island Anchorage Area.* The waters bounded by a line connecting the following points, beginning at 44°11′57.11″ N, 076°14′04.62″ W; thence to 44°11′21.80″ N, 076°14′05.77″ W; thence to 44°11′34.07″ N, 076°15′49.57″ W; 44°11′35.35″ N, 076°16′47.50″ W; 44°11′43.49″ N, 076°16′48.00″ W; 44°11′57.11″ N, 076°14′04.62″ W and back to the beginning point. These coordinates are based on WGS 84.

(2) *Tibbett's Island Anchorage Area.* The waters bounded by a line connecting the following points, beginning at 44°05′20.27″ N, 076°23′25.78″ W; thence to 44°05′21.85″ N, 076°22′40.97″ W; thence to 44°04′34.08″ N, 076°23′09.98″ W; 44°04′07.72″ N, 076°23′33.76″ W; 44°04′32.78″ N, 076°24′43.80″ W; 44°05′44.37″ N, 076°23′56.29″ W; 44°05′20.27″ N, 076°23′25.78″ W and back to the beginning point. These coordinates are based on WGS 84.

(b) *The regulations.* (1) Anchors must not be placed in the Saint Lawrence Seaway shipping channel. No portion of the hull or rigging may extend outside the limits of the anchorage area.

(2) No vessel may occupy any general anchorage described in paragraph (a) of this section for a period longer than 10 days unless approval is obtained from the Captain of the Port Buffalo (COTP) for that purpose.

(3) The COTP, or authorized representative, may require vessels to depart from the Anchorages described in paragraph (a) of this section before the expiration of the authorized or maximum stay. The COTP, or authorized representative, will provide at least 12-hour notice to a vessel required to depart the anchorages.

Dated: June 25, 2018.

J.M. Nunan,

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

[FR Doc. 2018–13928 Filed 6–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0105]

RIN 1625–AA87

Security Zone; Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Seattle Seafair Fleet Week Moving Vessel Security Zone regulation. In response to public comment, we are not finalizing our proposal to remove existing language about a published notice identifying the designated participating vessels. However, last minute changes to the participating vessels in the Parade of Ships during Fleet Week may cause the published notice to become outdated after publication. In that case the Coast Guard will use actual notice to enforce a security zone around participating vessels, as well as other methods of informing the public about changes, and we have amended the regulation to reflect the possibility of changes.

DATES: This rule is effective July 30, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0105 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Branch, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On July 10, 2012 (77 FR 40521), the Coast Guard Captain of the Port, Sector Puget Sound, published a final rule that became effective Aug. 1, 2012; the Seattle's Seafair Fleet Week Moving Vessels security zone. On April 6, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Security Zone; Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA (83 FR 14801) in which we proposed to amend the current final rule. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. During the comment period that ended May 21, 2018, we received three written submissions.

III. Legal Authority and Need for Rule

The Coast Guard is amending its Seattle Seafair Fleet Week Moving Vessel Security Zone regulation, 33 CFR 165.1333, under authority in 33 U.S.C. 1231. In past years, some of the designated participating vessels which required the security zone have been rescheduled at the last moment due to operational needs, and as a result, the changes precluded the Coast Guard from providing sufficient notice of which vessels are participating in the parade of ships in the **Federal Register**. The amended regulation will allow the Coast Guard to publish dates and times of the Parade of Ships in the **Federal Register** and Local Notice to Mariners, and of the designated participating vessels it is aware of at the time it issues the notice, and provide that actual notice will be used to enforce the security zone around any vessels designated after the notice has been issued. Further, for the reasons discussed above, the amended regulation will require that the Coast Guard publish the above information before the beginning of the Parade of Ships instead of the three days currently provided for in the regulation. The names of the designated vessels will also be published in a Broadcast Notice to Mariners.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received three written submissions on our NPRM published April 6, 2018. The first commenter requested to stop the Russian and Chinese fishing ships from fishing within the U.S. Exclusive Economic Zone. As this comment does not relate to this rulemaking, no response is required. The second commenter requested the Agency stop

wasting water from several of the Snake River hydroelectric dams that provide power and water for the navigation of vessel traffic for the region. This comment also does not relate the subject matter of this rulemaking and no response is required.

The third commenter provided a number of different concerns, each of which we address in turn as follows.

First, the commenter provided that the Thirteenth Coast Guard District failed to contact ''interested community groups'' as recommended by the Office for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, prior to implementation of exclusion zones. As noted by the commenter, the Coast Guard published a notice of proposed rulemaking in the **Federal Register**, providing notice of a proposed change of the notice of an annual security zone.

Second, the commenter provided that the Parade of Ships fails to comply with 33 CFR 100.15, which details the procedures for submission of a marine event permit, and that the event had never been conducted in a lawful manner. The Coast Guard has determined that in light of the existing regulations in place, such as the Naval Vessel Protection Zone in 33 CFR 165.2030, and the subject regulation, 33 CFR 165.1333, the Parade of Ships will not introduce extra or unusual hazards to the safety of life on the navigable waters of the United States such that a marine event permit would be required under 33 CFR 100.15. The commenter provided a discussion on the information required in a marine event permit application. As the discussion on what is required in a marine event permit does not relate to the proposed amendments to 33 CFR 165.1333, no further response is required.

Third, the commenter provided that proposed revisions to 33 CFR 165.1333 are actually due to previous Coast Guard errors instead of changing schedules, because it appears from prior correspondence with the Coast Guard that the Coast Guard may have mistakenly left out U.S. Navy vessels from the applicability of this zone. Naval Vessel Protection Zones under 33 CFR 165.2030 apply to large U.S. Navy vessels, which have historically participated in the Parade of Ships. As stated in the NPRM for the regulatory change we proposed, the reason why this rule is being amended is due to last minute changes in the vessels participating in the Parade of Ships due to operational needs. Based on this comment, however, we have decided to make a change from our proposed amendment to § 165.1333. We are amending § 165.1333(a) to explain that the Coast Guard may use actual notice to enforce security zones around participating vessels not included in the notice, in situations when due to operational needs there is a change after the notice has been issued and the COTP needs to add a vessel to the list of designated participating vessels. In those situations the Coast Guard will also announce any such changes in the Local Notice to Mariners. The reference to actual notice reflects existing authorities and enforcement practices, but we hope that stating it in the Code of Federal Regulations will be helpful. The change is within the scope of the proposed rule, which envisioned using actual notice for security zones around all participating vessels.

The COTP does not designate large U.S. Navy vessels—those more than 100 feet in length overall—that participate in the parade as designated participating vessels because persons who violate the naval vessel protection zone around those vessels, which are issued under 14 U.S.C. 91 authority, are already subject to penalties under 33 U.S.C. 1232. Whether a large U.S. Navy vessels is in Parade of Ships or not, it will be surrounded by a naval vessel protection zone and persons should comply with the provisions of that regulation.

Fourth, the commenter provided that Broadcast Notice to Mariners before and during the event is insufficient notice. The proposed regulatory change provides that the security zones will be enforced with actual notice which meets the standard set in 5 U.S.C. 552(a)(1). The Coast Guard considered the commenter's concerns about receiving Broadcast Notice to Mariners and, in response we revised the regulatory text to include an email and a phone number which members of the public can contact the Captain of the Port to receive an updated list of participating vessels. Furthermore, the Coast Guard actively conducts outreach to those participating in planned First Amendment activities related to the Parade of Ships so as to ensure the safety of all participants, and that participants of such activities are aware of all means to obtain the names of the vessels to which regulations apply.

Fifth, the commenter provided that an accurate list of vessels in the Parade of Ships is essential for vessel operators engaged in First Amendment activities. The Coast Guard concurs with this comment, but has pointed to the problem of last-minute changes making this objective difficult to achieve. Instead of eliminating the notice identifying participating vessels, as proposed, we will use actual notice to enforce security zones around vessels designated after the notice has been issued. In addition to actual notice, the Coast Guard will broadcast the names of the vessels to which the security zone applies using a Broadcast Notice to Mariners.

Sixth, the commenter provided that the Coast Guard's fear of free speech activities is irrational. The Coast Guard's rule amends the manner in which notice will be provided as to which vessels will have a security zone during the annual Parade of Ships during Fleet Week. The Coast Guard strives to ensure that free speech activities are respected and accommodated.

Seventh, the commenter provided that the Coast Guard should require an application for the maritime event, pursuant to 33 CFR 100.15, as it might allow for citizens to comment on the entire event in a meaningful way. The Coast Guard's position with respect to marine event permits can be found in the response to this commenter's second comment. Citizens may comment on the event in any way that is provided for under the protections of the First Amendment.

Eighth, the commenter provided that proposed revisions to 33 CFR 165.1333 expand restricted zones in Elliot Bay. The proposed amendment to 33 CFR 165.1333 did not expand the geographic size nor timeframe of the security zone.

After considering all the foregoing comments, the Coast Guard amended paragraph (a) of the regulatory text to maintain the notice while adding a provision providing for the Coast Guard to use actual notice for any vessels designated as participating vessels after the notice is issued. This maintains the notice but clarifies that we can address last minute changes to participating vessels because of operational needs. We also amended paragraph (e) to reflect additional methods of obtaining an up to date list of participating vessels, and we included both the date and times of the period that the regulation will be enforced, as opposed to just the date.

This rule amends the way in which the Coast Guard informs the public of the Seattle Seafair Fleet Week Parade. In order to provide notice to the public regarding the vessels requiring the security zones, the Coast Guard will continue to publish a notice in the **Federal Register** identifying designated participating vessels. We will also list in those notices the times, in addition to the dates, that the security zones will be enforced. We will use actual notice to make persons aware of changes to the notice identifying designated participating vessels and we will

identify all designated participating vessels, included those added late, in both Local Notice to Mariners and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that this rule only changes the means by which the public will be notified about the security zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves amending the way in which the Coast Guard will notify the public which vessels are designated participants in Seattle's Seafair Fleet Week. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 165.1333 by revising paragraphs (a) and (e) to read as follows:

§ 165.1333 Security Zones, Seattle's Seafair Fleet Week moving vessels, Puget Sound, WA.

(a) *Location.* The following areas are security zones: All navigable waters within 500 yards of each designated participating vessel in the Parade of Ships while each such vessel is in the Sector Puget Sound Captain of the Port (COTP) zone, as defined in 33 CFR 3.65–10, during a time specified in paragraph (e) of this section. The Coast Guard will publish a notice in the **Federal Register** each year before the start of the Seattle Seafair Fleet Week to identify the designated participating vessels for that year. Should information in the notice change after publication, as it may for operational reasons, the Coast Guard will use actual notice to enforce security zones around participating vessels not in the published notice. The Coast Guard will also provide this information in the Local Notice to Mariners.

* * * * *

(e) *Annual enforcement period.* The security zones described in paragraph (a) of this section will be enforced during Seattle Seafair Fleet Week each year for a period of up to 1 week. The Seattle Seafair Fleet Week will occur annually sometime between July 25 and August 14. The annual notice published in the **Federal Register** identifying the designated participating vessels will contain the dates and times that this section will be enforced. The Coast Guard will issue a Broadcast Notice to Mariners before the start of the Seattle Seafair Fleet Week to identify the designated participating vessels for that year. In addition, members of the public may contact the Sector Puget Sound COTP at (206) 217–6002 for a list of participating vessels.

Dated: June 22, 2018.

M.M. Balding,

Captain, U.S. Coast Guard, Acting Captain of the Port Puget Sound.

[FR Doc. 2018–13899 Filed 6–27–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0143; FRL–9979–97—Region 7]

Air Plan Approval; Iowa; Amendment to the Administrative Consent Order, Grain Processing Corporation, Muscatine, Iowa; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) submitted by the State of Iowa for the purpose of incorporating an amendment to the Administrative Consent Order (ACO) for Grain Processing Corporation (GPC), Muscatine, Iowa. The revision amends the ACO to change the date for completion of performance testing to allow the state more time to complete processing air construction permit applications submitted by GPC and specify testing requirements as appropriate in the final permits. This revision will not impact the schedule for installation and operation of control equipment, will not alter any other compliance dates, and will not adversely affect air quality in Muscatine, Iowa. The state held a 30-day comment period, during which no comments were received.

DATES: This final rule is effective on July 30, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2017–0143. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7039, or by email at *hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. Background
II. What is being addressed in this document?
III. Have the requirements for approval of a SIP submission been met?
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background

On August 25, 2017, EPA proposed to approve a revision to the Iowa State Implementation Plan (SIP) which amended the Administrative Consent Order (ACO) for Grain Processing Corporation (GPC), Muscatine, Iowa. The revision amended the ACO to change the date for completion of performance testing from May 31, 2017, to May 31, 2018, to allow the state more time to complete processing the remaining air construction permit applications submitted by GPC, and to specify testing requirements as appropriate in the remaining final permits. *See* 82 FR 40519. In conjunction with the August 25, 2017 notice of proposed rulemaking (NPR), EPA issued a direct final rule (DFR) approving the amended ACO. *See* 82 FR 40491. In the DFR, EPA stated that if adverse comments were submitted to EPA by September 25, 2017, the action would be withdrawn and not take effect. EPA received an adverse comment prior to the close of the comment period. EPA withdrew the DFR on October 12, 2017. *See* 82 FR 47396.

On April 11, 2018, EPA proposed to incorporate the amendment to the ACO for GPC. *See* 83 FR 15526. A revised Technical Support Document was included in the docket that addressed background information with regard to air quality in Muscatine, Iowa, as well as declining design values for the National Ambient Air Quality Standard for fine particulate matter with a diameter of 2.5 microns or smaller ($PM_{2.5}$). The proposal also addressed EPA's response to the adverse comments. The comment period for the proposed action ended on May 11, 2018. Three comments were received that were not related to the scope of the proposed rulemaking and therefore, will not be addressed in this final rulemaking.

II. What is being addressed in this document?

This final action approves a revision to the Iowa State Implementation Plan (SIP) submitted by the State of Iowa for the purpose of incorporating an amendment to the Administrative Consent Order (ACO) with Grain Processing Corporation (GPC), Muscatine, Iowa. The revision changes the date for completion of performance testing from May 31, 2017, to May 31, 2018, and will allow the state more time to complete processing air construction permit applications submitted by GPC and specify testing requirements as appropriate in the final permits. This amendment will not impact the

schedule for installation and operation of control equipment, will not alter any other compliance dates, and will not adversely affect air quality in the Muscatine, Iowa, area.

III. Have the requirements for approval of a SIP submission been met?

The state met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The state initiated public comment from April 6, 2013, to May 8, 2013. One comment was received and adequately addressed in the final SIP submission. The amended submission was placed on public comment January 12, 2017, to February 15, 2017. No comments were received. These submissions also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support documents which are part of the docket for this rulemaking, the submissions met the applicable substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is EPA taking?

This final action approves a SIP revision submitted by the State of Iowa for the purpose of incorporating an amendment to the Administrative Consent Order (ACO) with Grain Processing Corporation (GPC), Muscatine, Iowa.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of a revision to Iowa's EPA-approved State source-specific permits described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

[1] 62 FR 27968 (May 22, 1997).

VI. Statutory and Executive Order Reviews

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

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

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 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 August 27, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 13, 2018.

James B. Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Q—Iowa

■ 2. Section 52.820 paragraph (d) is amended by revising the entry ''(29) Grain Processing Corporation'' to read as follows:

§ 52.820 Identification of plan

* * * * *

(d) * * *

EPA-APPROVED IOWA SOURCE-SPECIFIC ORDERS/PERMITS

Name of source	Order/Permit No.	State effective date	EPA approval date	Explanation
*	*	*	*	*
(29) Grain Processing Corporation.	Administrative Consent Order No. 2014–AQ–A1.	1/16/17	12/1/14, 79 FR 71025; amendment approved 6/28/18 [Insert **Federal Register** citation].	The last sentence of Paragraph 5, Section III and Section VI are not approved by EPA as part of the SIP.
*	*	*	*	*

* * * * *

[FR Doc. 2018–13857 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0034; FRL–9980–09—Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Minnesota's regional haze progress report under the Clean Air Act (CAA) as a revision to the Minnesota State Implementation Plan (SIP). Minnesota has satisfied the progress report requirements of the Regional Haze Rule. Minnesota also provided a determination of the adequacy of its plan in addressing regional haze with its negative declaration, submitted with the progress report, that no revisions are needed to its plan.

DATES: This final rule is effective on July 30, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2015–0034. 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 Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@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 are EPA's responses 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. 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. 40 CFR 51.308(h). The first progress report SIP is due five years after submittal of the initial regional haze SIP.

Minnesota submitted its regional haze plan to EPA on December 30, 2009, with a supplement submitted on May 8, 2012. Correspondingly, Minnesota submitted its five-year progress report and its determination of adequacy on December 30, 2014. Minnesota made no substantive revisions to its regional haze plan as it determined that the existing SIP is sufficient to achieve the 2018 reasonable progress goals for the Class I areas impacted by Minnesota emissions and thus further revision to the SIP was unnecessary. EPA is approving Minnesota's progress report on the basis that it satisfies the applicable requirements of 40 CFR 51.308.

In order to satisfy the requirements for Best Available Retrofit Technology (BART) for certain taconite ore processing facilities in Minnesota, EPA promulgated a Federal Implementation Plan (FIP) for taconite on February 6, 2013, (78 FR 8706) and revised the taconite FIP on April 12, 2016, (81 FR 21672). Minnesota elected to use the Cross-State Air Pollution Rule (CSAPR) to satisfy BART for its electric generating units.

Two Class I areas are located in Minnesota, the Boundary Waters Canoe Wilderness Area (Boundary Waters) and the Voyageurs National Park (Voyageurs). Further, Minnesota emissions contribute to visibility impairment at a Class I area located out of state, the Isle Royale National Park (Isle Royale) in Michigan.

A direct final rule (DFR) approving the Minnesota regional haze progress report published on October 18, 2017 (82 FR 48425), along with a proposed rule (82 FR 48472) that provided a 30-day public comment period. The DFR evaluated the Minnesota submission by assessing its progress in implementing its regional haze plan during the first half of the first implementation period as well as the statutory and regulatory background for EPA's review of

[1] Under the CAA, a Class I Federal area is one in which visibility is protected more stringently than under the national ambient air quality standards. Class I Federal areas include national parks, wilderness areas, monuments, and other areas of special national and cultural significance.

Minnesota's regional haze plan. The DFR also provided a description of the regional haze requirements addressed in the Minnesota progress report. The DFR serves as the detailed basis for this final rule.

II. What are EPA's responses to the comments?

Comments were received on the DFR (82 FR 48425). The two anonymous commenters both expressed concern over CSAPR issues. The comments pertain to issues that were addressed in earlier Federal rulemakings.

Comments: One commenter claims that Minnesota's submission cannot be approved because CSAPR is a FIP and Minnesota cannot rely on a FIP to demonstrate that its SIP is adequate. The commenter also claims that CSAPR has been rescinded as a program and is no longer in force. The commenter states that, as a result, Minnesota cannot rely on CSAPR for its long term goals.

The other commenter contends that EPA cannot approve progress reports that rely on CSAPR or any other regional trading program to satisfy the BART requirements because BART is required on a source-by-source basis. The commenter claims that BART needs to evaluated based on the impacts on each national park from each source, not as a holistic multi-source or multi-park evaluation.

Response: The regulations governing progress reports do not include a requirement for states (or EPA) to ensure that all applicable regional haze requirements for the planning period have been met by the existing plan. As such, the comment raising concerns about the reliance on CSAPR to satisfy the BART requirement raises issues outside the scope of this rulemaking. We do note, however, that 40 CFR 51.308(e)(4) allows a state to rely on participation in a CSAPR FIP to address the BART requirements for electric generating units (EGUs). Consistent with this rule, EPA approved Minnesota's regional haze plan in 2012 as satisfying the applicable BART requirements in 40 CFR 51.308 for the subject EGUs through participation in CSAPR (77 FR 34801 (June 12, 2012)).

EPA's approval of Minnesota's reliance on CSAPR to satisfy the BART requirements for these sources rather than requiring source by source BART was upheld by the 8th Circuit. *National Parks Conservation Ass'n* v. *McCarthy,* 816 F.3d.989, 994 (8th Cir. 2016). More broadly, EPA's regulations that allow for the comparison of average visibility improvements across multiple Class I areas in assessing regional trading programs as alternatives to BART has also been upheld as reasonable by the D.C. Circuit. *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333, 1340–41 (D.C. Cir. 2006) (upholding CAIR as a BART alternative); *Utility Air Regulatory Group* v. *EPA,* 885 F.3d 714, 721 (D.C. Cir. 2018) (upholding CSAPR as a BART alternative). We also note that CSAPR has not been rescinded and remains in force. Finally, the regional haze rule defines ''implementation plan'' to include approved SIPs or FIPs. Given this, states may rely on FIPs in their progress reports to demonstrate the adequacy of a plan to achieve reasonable progress goals.

In summary, EPA disagrees that the points raised by the commenters prevent approval of the progress report. Thus, EPA finds that Minnesota's progress report satisfies 40 CFR 51.308.

III. What action is EPA taking?

EPA is approving the regional haze progress report that Minnesota submitted on December 30, 2014, under the CAA as a revision to the Minnesota SIP. EPA finds that Minnesota has satisfied the progress report requirements of the Regional Haze Rule. EPA also finds that Minnesota has met the requirements for a determination of the adequacy of its regional haze plan with its negative declaration submitted 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 August 27, 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: June 18, 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 § 52.1220, the table in paragraph (e) is amended by adding an entry for ''Regional Haze Progress Report'' to follow the entry titled ''Regional Haze Plan'' to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(e) * * *

EPA—APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Comments
*	*	*	*	*
Regional Haze Progress Report	statewide	12/30/2014	6/28/2018, [insert **Federal Register** citation]	
*	*	*	*	*

* * * * *

[FR Doc. 2018–13825 Filed 6–27–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0386; FRL–9979–85—Region 7]

Approval of Nebraska Air Quality Implementation Plans; Adoption of a New Chapter Under the Nebraska Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the State Implementation Plan (SIP) revision submitted by the state of Nebraska on November 14, 2011. Nebraska is adding a new chapter titled ''Visibility Protection'' which provides Nebraska authority to implement Federal regulations relating to Regional Haze and Best Available Retrofit Technology (BART). The new chapter incorporates EPA's Guidelines for BART Determinations under the Regional Haze Rule. The revision to the SIP meets the visibility component of the Clean Air Act (CAA).

DATES: This final rule is effective on July 30, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2017–0386. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7391, or by email at *crable.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. Background
II. What is being addressed in this document?
III. Have the requirements for approval of a SIP revision been met?
IV. EPA's Response to Comments
V. What action is EPA taking?
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

I. Background

EPA received Nebraska's November 8, 2011, SIP submission. On October 5, 2017, EPA proposed to approve the SIP submission from the State of Nebraska. *See* 82 FR 46433. In conjunction with the October 5, 2017 notice of proposed rulemaking (NPR), EPA issued a direct final rule (DFR) approving the same SIP submission. *See* 82 FR 46415. However, in the DFR, EPA stated that if EPA received adverse comments by November 6, 2017, the action would be withdrawn and not take effect. EPA received one set of adverse comments prior to the close of the comment period. EPA withdrew the DFR on November 27, 2017. *See* 82 FR 55951.

The revision to title 129, adding chapter 43, Visibility Protection, addressed in this action was originally proposed and approved during the September 8, 2006, Environmental Quality Council (ECQ) meeting. However, the revision was not approved by Attorney General's office. On August 17, 2007, an amended package was re-submitted to the EQC, at which time it was approved by both the EQC and the Attorney General's office. After the Governor's signature, the revision adding chapter 43 became effective on February 6, 2008. Chapter 43 was submitted to the EPA, as part of a larger SIP package on November 8, 2011. Some of the revisions submitted in November 2011, were withdrawn by the State for various reasons. The remaining revisions to title 129, except for

revisions adding chapter 43, were approved on October 7, 2016, (81 FR 69693). Chapter 43 is being addressed with this action.

This final rule action will include the updated docket, address comments received, and finalize the approval of Nebraska's SIP submission.

II. What is being addressed in this document?

EPA is taking action to approve revisions to Nebraska's SIP that will amend title 129 of the Nebraska Administrative Code to include a rule addressing certain requirements related to regional haze rule of 1999 [1]. This proposed revision adds a new chapter, chapter 43, entitled ''Visibility Protection'', to title 129 which incorporates a portion of EPA Code of Federal Regulations under title 40 part 51 of EPA's Guidelines for BART determinations under the Regional Haze Rule. This new chapter provides the Nebraska Department of Environmental Quality (NDEQ) the authority to require sources to conduct BART determinations for the purpose of issuing BART permits. This revision to title 129 is consistent with Federal regulations related to Regional Haze and BART, adopting by reference the definitions for the Federal Regional Haze rule at 40 CFR 51.301 and adopting by reference, appendix Y to 40 CFR part 51, ''Guidelines for BART Determinations under the Regional Haze Rule.'' The revision to the SIP also meets the visibility component of the CAA section 110(a)(2)(J). Approval of these revisions will not impact air quality and will ensure consistency between the State and federally approved rules.

III. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The revised chapter was placed on public notice and a public hearing was held by the State on July 13, 2007, where no comments were received. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. EPA's Response to Comments

The public comment period on EPA's proposed rule opened October 5, 2017 the date of its publication in the **Federal Register**, and closed on November 6, 2017. During this period, EPA received one set of adverse comments, which are addressed below.

Comment 1: The commenter stated that the EPA has improperly titled this action. The commenter elaborated by stating that if EPA is acting on a Regional Haze SIP from Nebraska, then it should not be calling this 'New Chapter under Nebraska Code'. The commenter's concern was that the title was not descriptive or transparent. Finally, the commenter stated that the EPA's titling of this action could very well violate the administrative procedures act (APA), or at least the spirit of the APA.

Response 1: By this action, EPA is not acting on a regional haze SIP. This rule gives NDEQ the authority to issue permits for best available retrofit technology or ''BART.'' EPA retained the title used by the state in describing its SIP, and that title accurately describes the action—addition of the new chapter 43.

The Administrative Procedure Act at 5 U.S.C. 553(b)(1)–(3) states that the notification of the rule be published in the **Federal Register** and that the document shall include the time, place, and nature of the public rule making proceedings, the legal authority for the proposed rule, and either the terms or substance of the proposed rule or a description of the subjects and issues involved. This action meets the procedures outlined in the APA. The proposal document was published in the **Federal Register**. *See* 82 FR 46433. It provided a summary that clearly described that substance of the proposed rule, explaining that the addition of the new chapter provides Nebraska with ''authority to implement Federal regulations relating to Regional Haze and Best Available Retrofit Technology (BART) . . . [and] meets the visibility component of the Clean Air Act (CAA).'' *Id.* In addition, the document provided information on the process for submitting comments and explained the general rulemaking process EPA was using (*i.e.,* the direct final rule with an accompany parallel proposal). That document also clearly stated that EPA ''explained our reasons for this action in the preamble to the direct final rule,'' *id.,* thereby incorporating the information provided in the accompanying direct final rule preamble, and directing the reader where to find the document for the direct final rule within the **Federal Register**. In turn, the document for the direct final rule provided more detail on the substance of the SIP submittal and the legal authority for both Nebraska's submission and EPA's action on it. *See* 82 FR 46415 (which includes a section describing how the state's submission met various statutory and regulatory requirements and explaining that EPA could approve the submission because it is consistent with Federal Regional Haze regulations in 40 CFR part 51 and CAA section 110(a)(2)(j)).

Comment 2: The commenter stated that EPA needs to repropose this action. The commenter stated that multiple documents in the docket were incomplete, specifically citing: ''1) the memo from NE that details the regional haze changes to chapter 43 has been cutoff, see docket document ending in 2017–0386–0012, page 4—this page ends in the middle of a sentence and does not include important information allowing me to evaluate and provide comment. 2) Document ending in 2017–0386–0016, page 5 is corrupt and page 6 is nonexistant [sic].'' The commenter was concerned that information was not able to be reviewed or commented on.

Response 2: After review of the comments received and the EPA's docket for this action, the EPA agrees that the pages outlined by the commenter were missing. However, the missing pages highlighted by the commenter were not provided by the state as part of the state's SIP submission, was an administrative error, and were not used to support the EPA's action. To verify this statement, the EPA has followed up with the state of Nebraska. The state determined that the documents in the docket were the same as what was placed on review for public comment in Nebraska during the state's comment period. The referenced memorandum was a request for approval. It is not evidence of the governor's approval and therefore, is not relied upon for the approval of the SIP action. The attachment listed in the docket as 2017–0386–0016 is a proposed SIP revision for chapter 5 of Nebraska's SIP. EPA took action on this portion of the submission on October 7, 2016 (see 81 FR 69693). Therefore, attachment 2017–0386–0016 of the docket for this action is not relied upon to support this action.

Additionally, the state's submission included additional revisions that are not being acted upon in this action.[2] When the EPA uploaded the docket for this action, additional attachments were included. For this action, the EPA relied upon the following specific pages of the outlined attachments:

—EPA–R07–OAR–2017–0386–0003—pages 1 through 3;

[1] Title 40 Code of Federal Regulation (CFR) 51.308.

[2] September 12, 2016, letter in the docket.

—EPA–R07–OAR–2017–0386–0004—page 1;
—EPA–R07–OAR–2017–0386–0006—pages 1 through 12;
—EPA–R07–OAR–2017–0386–0010—pages 5 through 6;
—EPA–R07–OAR–2017–0386–0011—page 2;
—EPA–R07–OAR–2017–0386–0013—page 2;
—EPA–R07–OAR–2017–0386–0015—page 3; and
—EPA–R07–OAR–2017–0386–0019—pages 1 through 4.

All the documents EPA relied on were included in the docket at the time the **Federal Register** document was published.

Comment 3: The commenter stated that the EPA failed to evaluate this action in regard to the March 27, 2017, executive order on energy independence and economic growth. EPA's requirement for states to adopt regional haze SIPs, and thus including chapter 43 in the SIP, will cause a significant impact on coal EGUs and eventually closure of coal EGUs in the state, causing economic hardship on the local communities. Nebraska's fiscal impact statement says, ''There is a substantial cost to BART-eligible sources for the required modeling under the BART program. As of now, it is unknown whether and what controls any source in Nebraska may have to install to comply with BART, but the cost of controls would be substantial.'' The requirement to comply with chapter 43 is significant.

Response 3: Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the CAA. The EPA cannot consider disapproving a SIP submission or require any changes based on the March 27, 2017, executive order.

Comment 4: The commenter stated that it is unclear from the action whether EPA is approving the other chapters and revisions to other chapters into the SIP. EPA included multiple other rules in the docket; however, the rule making action only discusses chapter 43, which is merely three provisions long.

Response 4: EPA acknowledges that the state's submittal referenced multiple additional chapters and revisions to the state's rules. Within the proposal for this action, the EPA clearly stated that it was proposing ''to take action to add chapter 43, 'Visibility Protection.' '' 82 FR 46433. Within the EPA's proposal, no additional chapters were referenced for approval. This action finalizes the proposed action [3] and does not include any additional chapters beyond chapter 43. As the EPA stated earlier, additional portions of the state's submittal were included in the docket for the proposed rule. As outlined in Nebraska's September 12, 2016, letter, portions of the state's submission were withdrawn. However, the EPA has kept the docket intact and added the September 12, 2016, letter to provide additional clarity on which portions of the submission that the EPA was requested to approve. However, in response to comment number 2, the EPA has provided specific pages of the docket on which the EPA relied for this action.

Comment 5: The commenter stated that the EPA did not evaluate the new regulation against the EPA's Regional Haze Rule nor did EPA show that this new rule meets the regional haze requirements. EPA also did not say whether or not approving this new rule means that Nebraska has an approved Regional Haze SIP.

Response 5: This action is not specifically a Regional Haze SIP. This action is designed to show that NDEQ has the authority to implement BART procedures. This action was not required as part of Nebraska's Regional Haze SIP. The EPA partially approved and partially disapproved Nebraska's Regional Haze SIP on July 6, 2012. The full docket for that rulemaking can be found at EPA–R07–2012–0158–0051.

Comment 6: The commenter stated that assuming this new rule is not a Regional Haze SIP and does not meet the requirements of the Regional Haze rule, EPA needs to require Nebraska to submit any permits issued to address BART under this new rule as source-specific SIP revisions as this rule is merely a generic-type rule that lays out a process by which sources will address BART related requirements.

Response 6: As explained above, this action is not specifically a Regional Haze SIP, so the assumptions alleged in the comment are not relevant. This action is designed to show that NDEQ has the authority to implement BART procedures and it has been approved for that purposes. This action was not required as part of Nebraska's Regional Haze SIP, which the EPA partially approved and partially disapproved on July 6, 2012 (*see* rulemaking docket EPA–R07–2012–0158–0051).

Comment 7: The commenter stated that the new chapter 43 and the revised chapter 1 do not include any Regional Haze related definitions such as the definition of BART, or the types of emission limitations or work practices which constitute BART for a given source. The commenter also stated that there was confusion on if EPA was acting on chapter 1 as part of this action.

Response 7: As the EPA outlined in its proposed rule and explained above in response to comment 4, the EPA is only acting on chapter 43 in this action. EPA is not acting on revisions to chapter 1 in this action. Chapter 43 references the Federal BART requirements. The state is incorporating a portion of the Federal requirements, including definitions related to BART.

V. What action is EPA taking?

EPA is taking final action to revise the Nebraska SIP to add a new chapter, chapter 43.

VI. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Nebraska Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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:

[3] 82 FR 46433

[4] 62 FR 27968 (May 22, 1997).

• Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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 August 27, 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, Best available retrofit technology, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide, Visibility, Volatile organic compounds.

Dated: June 13, 2018.

James B. Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart CC—Nebraska

■ 2. In § 52.1420, the table in paragraph (c) is amended by revising the entry ''129–43'' to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA Approval date	Explanation
STATE OF NEBRASKA				
Department of Environmental Quality				
Title 129—Nebraska Air Quality Regulations				
*	*	*	*	*
129–43	Visibility Protection	2/6/08	6/28/18, [insert **Federal Register** citation].	
*	*	*	*	*

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[FR Doc. 2018–13723 Filed 6–27–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2017–0613; FRL–9979–88–OLEM]

Oklahoma: Approval of State Coal Combustion Residuals Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of final authorization.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is approving the Oklahoma Department of Environmental Quality's Coal Combustion Residuals (CCR) State permit program, which will operate in lieu of the Federal CCR program. EPA has determined that Oklahoma's program meets the standard for approval under RCRA. Facilities operating under the state program requirements and resulting permit provisions will also be subject to EPA's inspection and enforcement authorities under RCRA.

DATES: The final authorization is effective on July 30, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Jackson, Office of Resource Conservation and Recovery, Environmental Protection Agency; *telephone number:* (703) 308–8453; *email address: jackson.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. General Information

A. Overview of Final Authorization

EPA is granting approval to Oklahoma's CCR state permit program application, pursuant to RCRA 4005(d)(1)(B). Oklahoma's program allows the Oklahoma Department of Environmental Quality (ODEQ) to enforce state rules related to CCR disposal activities in non-Indian country, as well as to review for approval permit applications and to enforce permit violations. Oklahoma's CCR permit program will operate in lieu of the Federal CCR program, codified at 40 CFR part 257, subpart D.

EPA will retain sole authority to regulate and permit CCR units in Indian country as defined in 18 U.S.C. 1151, which includes reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States. EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation.[1] EPA has engaged federally-recognized Tribes within the state of Oklahoma in consultation and coordination regarding the program authorizations for ODEQ and established opportunities for formal as well as informal discussion throughout the consultation period, beginning with an initial conference call on October 19, 2017. On that call, the authorization procedures and the impact of granting authorization were discussed, and further consultation was offered. Tribal consultation is conducted in accordance with the EPA policy on Consultation and Coordination with Indian Tribes. (see *https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf*).[2]

B. Background

CCR are generated from the combustion of coal, including solid fuels classified as anthracite, bituminous, subbituminous, and lignite, for the purpose of generating steam for powering a generator to produce electricity or electricity and other thermal energy by electric utilities and independent power producers. CCR include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. CCR can be sent off-site for disposal or beneficial use or may be disposed in on-site landfills or surface impoundments.

On April 17, 2015, EPA published a final rule, creating 40 CFR part 257, subpart D, which established nationally applicable minimum criteria for the safe disposal of CCR in landfills and surface impoundments (80 FR 21302). The rule created a self-implementing program which regulates the location, design, operating criteria, groundwater monitoring and corrective action for CCR disposal, as well as regulating the closure and post-closure care of CCR units and recordkeeping and notifications for CCR units. The regulations do not cover the ''beneficial use'' of CCR as that term is defined in § 257.53.

C. Statutory Authority

EPA is issuing this action under the authority of RCRA sections 4005(d) and 7004(b)(1). See 42 U.S.C. 6945(d), 6974(b)(1).

In December 2016, Congress passed and the President signed the Water Infrastructure Improvements for the Nation (WIIN) Act. Section 2301 of the WIIN Act amended Section 4005 of RCRA, creating a new subsection (d) that establishes a Federal permitting program similar to those under RCRA section 4005(c) and subtitle C, as well as other environmental statutes. See 42 U.S.C. 6945(d). Under section 4005(d), states may develop and submit a CCR permit program to EPA for approval; once approved the state permit program operates in lieu of the Federal requirements. See 42 U.S.C. 6945(d)(1)(A).

To become approved, the statute requires that a state provide ''evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residuals units that are located in the state.'' See 42 U.S.C. 6945(d)(1)(A). In addition, the statute directs that the state submit evidence that the program meets the standard in section 4005(d)(1)(B), *i.e.,* that it will require each CCR unit located in the state to achieve compliance with either: (1) The Federal CCR requirements at 40 CFR part 257, subpart D; or (2) other state criteria that the Administrator, after consultation with the state, determines to be at least as protective as the Federal requirements. See 42 U.S.C. 6945(d)(1)(B). EPA has 180 days after submittal of such evidence to make a final determination, and must provide public notice and an opportunity for public comment. See 42 U.S.C. 6945(d)(1)(B).

To receive EPA approval, EPA must determine that the state program requires each CCR unit located in the state to achieve compliance either with the requirements of 40 CFR part 257, subpart D, or with state criteria that EPA determines (after consultation with the state) to be at least as protective as the requirements of 40 CFR part 257, subpart D. See 42 U.S.C. 6945(d)(1)(B). EPA may approve a proposed state permit program in whole or in part. *Id.*

Once a program is approved, EPA must review the program at least every 12 years, as well as no later than three years after a revision to an applicable section of 40 CFR part 257, subpart D, or one year after any unauthorized significant release from a CCR unit located in the state. See 42 U.S.C. 6945(d)(1)(D)(i)(I)–(III). EPA also must review a program at the request of another state alleging that the soil, groundwater, or surface water of the requesting state is or is likely to be

[1] *See, e.g.,* Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 511 (1991).

[2] See October 12, 2017 letter from Wren Stenger to Chet Brooks, Chief, Delaware Tribe of Oklahoma. EPA–HQ–OLEM–2017–0613.

adversely affected by a release from a CCR unit in the approved state. See 42 U.S.C. 6945(d)(1)(D)(i)(IV).

In a state with an approved CCR program, EPA may commence administrative or judicial enforcement actions under RCRA section 3008 if the state requests assistance or if EPA determines that an EPA enforcement action is likely to be necessary to ensure that a CCR unit is operating in accordance with the criteria of the approved permit program. See 42 U.S.C. 6945(d)(4).

II. Oklahoma's Application

ODEQ issued a notice of rulemaking intent related to its proposed CCR program and accepted public comments from December 1, 2015, through January 13, 2016. ODEQ then published an Executive Summary rulemaking document that included the public comments received and the ODEQ responses.

In September 2016, ODEQ promulgated Oklahoma Administrative Code (OAC) Title 252 Chapter 517 *Disposal of Coal Combustion Residuals from Electric Utilities,* establishing its CCR program. OAC 252:517 incorporates the Federal technical regulations at 40 CFR part 257, subpart D, with some minor modifications discussed below.

On August 3, 2017, EPA received an application from the state of Oklahoma requesting a review of their CCR state permit program. EPA determined that the application was complete and notified Oklahoma of its determination by letter dated December 21, 2017.[3] On January 16, 2018, EPA published a notification and requested comment on its proposed determination to approve the Oklahoma CCR program (83 FR 2100). The comment period closed on March 19, 2018.

On February 13, 2018, EPA conducted a public hearing on the application at the ODEQ building located at 707 N Robinson Avenue, Oklahoma City, Oklahoma. The public hearing provided interested persons the opportunity to present information, views or arguments concerning ODEQ's program application. Comments from the hearing as well as additional comments received during the comment period are included in the docket for this document.

The state indicates there are currently five CCR facilities in Oklahoma.[4] A facility previously thought to be regulated under the CCR part 257 regulations was not correctly identified initially. One of the current five facilities is not yet permitted as it was previously under the jurisdiction of the Oklahoma Department of Mines. The other four facilities have permitted landfills and/or surface impoundments that are now subject to the CCR part 257 regulations. Approval of ODEQ's CCR application allows the ODEQ regulations to apply to existing CCR units, as well as any future CCR units not located in Indian country, in lieu of the Federal requirements.

EPA is not aware of any existing CCR units in Indian country within Oklahoma, but EPA will maintain sole authority to regulate and permit CCR units in Indian country, meaning formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States.

III. EPA Analysis of Oklahoma's Application

As discussed in Section I.C. of this document, the statute requires EPA to evaluate two components of a state program to determine whether it meets the standard for approval. First, EPA is to evaluate the adequacy of the permit program itself (or other system of prior approval and conditions). See 42 U.S.C. 6945(d)(1)(A). Second, EPA is to evaluate the adequacy of the technical criteria that will be included in each permit to determine whether they are the same as the Federal criteria, or to the extent they differ, whether the modified criteria are ''at least as protective as'' the Federal requirements. See 42 U.S.C. 6945(d)(1)(B). Only if both components meet the statutory requirements may EPA approve the program. See 42 U.S.C. 6945(d)(1).

On that basis, EPA conducted a review of ODEQ's application, including a thorough analysis of OAC 252:517 and its adoption of 40 CFR part 257, subpart D (see section A. Adequacy of Oklahoma's Permit Program and section B. Adequacy of Technical Criteria below.). Based on this review, EPA has determined that ODEQ's CCR permit program as submitted meets the standard for approval in section 4005(d)(1)(A) and (B). Oklahoma's program contains all but two of the technical elements of the Federal rule, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification and internet posting requirements. As discussed in greater detail below, the two exceptions relate to the requirements at 40 CFR 257.3–1 (which address siting of units in floodplains), and 257.3–2 (which addresses the protection of endangered and threatened species). Oklahoma has not adopted the specific language of either of these Federal regulations but is relying on its existing state regulations at OAC 252:517–5–8 and 5–9 which EPA has determined to be at least as protective as the Federal criteria. The program also contains state-specific language, references and state-specific requirements that differ from the Federal rule, which EPA has determined to be at least as protective as the Federal criteria. EPA's analysis and findings are discussed in greater detail below and in the Technical Support Document for the Approval of Oklahoma's Coal Combustion Residuals State Permit Program, which is included in the docket to this action.

The OAC rules promulgated in 2016 included language inserts and deletions to enable ODEQ to permit CCR units and enforce the Oklahoma rule. The revisions include: The removal of statements regarding national applicability; the inclusion of language to require submittal and approval of plans to ODEQ; the inclusion of permitting provisions to allow ODEQ to administer the CCR rules in the context of a permitting program; the inclusion of state-specific location restrictions; the inclusion of procedures for subsurface investigation; and the inclusion of provisions addressing cost estimates and financial assurance.

Throughout Oklahoma's Chapter 517 rules, references for tribal notifications and/or approval that appear in the Federal rule have been deleted along with the terms ''Indian Country,'' ''Indian Lands,'' and ''Indian Tribe.'' Per the WIIN Act, EPA will retain sole authority to operate the Federal CCR program in Indian country, including the regulation and permitting of CCR units. As defined in 18 U.S.C. 1151, Indian country includes reservations. Dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States. EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation. *See, e.g., Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505, 511 (1991).

[3] ODEQ's initial CCR permit program application, subsequent supplementation, and EPA's determination of completeness letter are available in the docket supporting this authorization.

[4] The notification for proposed authorization indicated six facilities in Oklahoma. Currently there are 5 facilities at which CCR units are located. The sixth facility identified in the proposal stores fly and bottom ash in metal bins or enclosed structures neither of which meets the definition of a CCR unit.

A. Adequacy of Oklahoma's Permit Program

RCRA section 4005(d)(1)(A) requires a state seeking program approval to submit to EPA an application with ''evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residuals units that are located in the State.'' RCRA section 4005(d) does not require EPA to promulgate regulations for determining the adequacy of state programs. EPA therefore evaluated the adequacy of ODEQ's permit program against the standard in RCRA section 4005(d)(1)(A) by reference to the existing regulations in 40 CFR part 239, Requirements for State Permit Program Determination of Adequacy and the statutory requirements for public participation in RCRA Section 7004(b). The Agency's general experience in reviewing and approving state programs also informed EPA's evaluation.

In order to aid states in developing their programs and to provide a clear statement of how, in EPA's judgment, the existing regulations and statutory requirements in sections 4005(d) and 7004(b) apply to state CCR programs, EPA announced on August 15, 2017, the availability of an interim final Guidance for Coal Combustion Residuals State Permit Programs (82 FR 38685). This guidance outlines the process and procedures EPA generally intends to use to review and make determinations on state CCR permit programs, and that were used in evaluating Oklahoma's application.

RCRA section 7004(b) applies to all RCRA programs, directing that ''public participation in the development, revision, implementation, and enforcement of any . . . program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.'' 42 U.S.C.S. 6974(b)(1). Although 40 CFR part 239 applies to approval of state Municipal Solid Waste Landfill (MSWLF) programs under RCRA 4005(c)(1), rather than EPA's evaluation of CCR permit programs under RCRA 4005(d), the specific criteria outlined in part 239 provide a helpful framework to more broadly examine the various aspects of ODEQ's proposed program. States are familiar with these criteria through the MSWLF program (all states have MSWLF programs that have been approved pursuant to these regulations) and the regulations are generally regarded as protective and appropriate. In general, EPA considers that a state program that is consistent with the part 239 provisions would meet the section 7004(b)(1) directive regarding public participation. As part of analyzing the application, EPA reviewed the four categories of criteria outlined in 40 CFR part 239 as guidelines for permitting requirements, requirements for compliance monitoring authority, requirements for enforcement authority, and requirements for intervention in civil enforcement proceedings.

To complete its evaluation, EPA relied on the information contained in the original application, as well as all materials submitted during the comment period and at the public hearing. The findings are also based on additional information submitted by Oklahoma on April 27, 2018 and May 9, 14, 16, and 31, 2018, in response to follow-up questions from EPA on the authorization application. All of this information is included in the docket for this document. A summary of EPA's findings is provided below, organized by the program elements identified in the part 239 regulations and EPA's interim final guidance document; detailed analysis of the submitted state program can be found in the Technical Support Document, which is included in the docket for this action.

1. Permitting Guidelines

Based on RCRA section 7004 and on the part 239 regulations, an adequate permitting program will provide for public participation by ensuring that: Documents for permit determinations are made available for public review and comment; final determinations on permit applications are made known to the public; and public comments on permit determinations are considered.

All environmental permit and modification applications in Oklahoma are subject to the Oklahoma Uniform Environmental Permitting Act (UEPA) and the permitting rules promulgated to carry out UEPA. UEPA classifies all permit applications and modifications into three tiers that determine the level of public participation and administrative review the permit application will receive. (Section 27A–2–14–201(B)(1)). In making determinations for Tier I, II or III, the following criteria are considered:

- The significance of the potential impact of the type of activity on the environment,
- the amount, volume and types of waste proposed to be accepted, stored, treated, disposed, discharged, emitted or land applied,
- the degree of public concern traditionally connected with the type of activity,
- the Federal classification, if any, for such proposed activity, operation or type of site or facility, and
- any other factors relevant to such determinations.

Such designations must be consistent with any analogous classifications set forth in applicable Federal programs. Section 27A OS–2–14–201(B)(2). Oklahoma classifies solid waste management applications, including CCR applications, into their respective tiers at OAC 252:4–7–58 through 60. All permit documents, regardless of tier, are available for public review and copying. OAC 252:4–1–5.

Oklahoma describes the Tier I permit application process as ''the category for those things that are basically administrative decisions which can be made by a technical supervisor with no public participation except for the landowner.'' OAC 252:4–7–2. The Tier I permit application requires an application, notice to the landowner, and Department review. 27A O.S. section 2–14–103(9). Applications for minor modifications, and approval of technical plans fall within the Tier I category. OAC 252:4–7–58. Such plans would include, for example, fugitive dust control plans, run-on/runoff control system plans. EPA notes that these plans would be available for public comment and review if they are part of a new permit or other action designated as Tier II or III as discussed below.

Under OAC 252:4–7–58 (2)(A)(iii), modifications to closure or post-closure plans and modifications to technical plans are considered Tier 1 modifications. ODEQ has stated that, when applying the regulations and designating the appropriate Tier for these plan modifications, the underlying UEPA statute requires consideration of potential environmental impact.[5] For example, if a facility had an approved closure plan to close the unit with waste in place and they sought approval instead to ''clean close'' the unit, that would be considered minor (Tier I) because clean closure is generally a more aggressive and difficult to achieve option. However, if a facility applied to amend a closure plan that specifies clean closure, and it is modified to authorize closure of the unit with waste in place, such a change would be designated as Tier II (discussed below). The basis for requiring this would be the statutory provisions at 27A–2–14–201 listed above. Thus, the seemingly broad categories of Tier 1 modifications must

[5] Telephone Conference Call May 11, 2018 EPA Region VI, EPA Office of Resource Conservation and Recovery, ODEQ.

be interpreted to be consistent with the statutory directive.

The Tier II permit application process expands upon the Tier I requirements to include published notice of the application filing, published notice of the draft permit or denial, opportunity for a public meeting, and submittal of public comment. 27A O.S. section 2–14–103(10). The Tier II process applies to new permits for on-site CCR disposal units and all modifications to existing facilities unless specifically listed under Tier I. OAC 252:4–7–59. ODEQ requires any application for expansion of a CCR unit or additional capacity, whether existing or new surface impoundment or landfill, to follow at a minimum the Tier II process. Non-generator owned facilities that receive material from off-site follow the Tier III process.

The Tier III permit application process includes the requirements of Tiers I and II and adds notice of an opportunity for a process meeting (*i.e.* how the permit process works). The Tier III process applies to new permits for off-site disposal units and permits for some significant modifications to off-site disposal units. OAC 252:4–7–60.

UEPA provides for public notice and review of permit applications and significant permit modifications through its Tier II and III programs. In the case of Tier II and III applications that do not receive timely comments or public meeting request and for which no public meeting was held, the final permit would be issued or denied by ODEQ. For Tier II and III applications for which comments or a public meeting request was received or which a public meeting was held, ODEQ considers the comments and then prepares a response to comments prior to issuance of the final permit. These programs provide opportunities for public participation and the application of UEPA to the CCR permitting program is consistent with Oklahoma's practice across environmental programs. Permit and permit modification applications for CCR facilities fall under the existing solid waste management application requirements at OAC 252:4–7–58 through 60. Thus, EPA has determined that the Oklahoma program provides for adequate public participation, thereby satisfying the requirements of RCRA section 7004.

2. Guidelines for Compliance Monitoring Authority

EPA considers that the ''evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residuals units'' required under RCRA 4005(d)(1)(A) should normally include information to demonstrate that the state has the authority to gather information about compliance, perform inspections, and ensure that information it gathers is suitable for enforcement. Note that this is consistent with the part 239 regulations and with the interpretation expressed in EPA's interim final guidance.

ODEQ has compliance monitoring authority under 27A O.S. section 2–3–501, allowing for inspections, sampling, information gathering, and other investigations. This authority extends to ODEQ's proposed CCR permit program and would provide the authority to adequately gather information for enforcement.

3. Guidelines for Enforcement Authority

EPA considers that the ''evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residual units'' required under RCRA 4005(d)(1)(A) should normally include information to demonstrate that the state has adequate authority to administer and enforce RCRA CCR permit programs, including: the authority to restrain any person from engaging in activity which may damage human health or the environment, the authority to sue to enjoin prohibited activity, and the authority to sue to recover civil penalties for prohibited activity.

EPA has determined that ODEQ has adequate authority to administer and enforce its existing programs under 27A O.S. section 2–3–501–507 and that authority extends to the ODEQ CCR permit program.

4. Intervention in Civil Enforcement Proceedings

Based on RCRA section 7004, EPA considers that the ''evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residuals units'' required under RCRA 4005(d)(1)(A) includes a demonstration that the state provides adequate opportunity for citizen intervention in civil enforcement proceedings. As EPA has explained (for example, in the interim final guidance) the standards found in 40 CFR 239.9 provide a useful model. Using those standards, the state must have authority to allow citizen intervention or provide assurance of (1) a notice and public involvement process, (2) investigating and providing responses about violations, and (3) not opposing intervention when permitted by statute, rule, or regulation.

Using 40 CFR 239.9(a) as a model, ODEQ's CCR program satisfies the civil intervention requirement by allowing intervention by right (12 OK Stat section 12–2024).[6] In addition, ODEQ's CCR program would satisfy the requirements of 40 CFR 239.9(b) by providing a process to respond to citizen complaints (see 27A O.S. section 2–3–101,503) and by not opposing citizen intervention when allowed by statute (see 27A O.S. section 2–7–133).

ODEQ has a robust process for responding to citizen complaints. Under 27A O.S. section 2–3–101–F–1, the complaints program is responsible for intake processing, mediation and conciliation of inquiries and complaints received by the Department and provides for the expedient resolution of complaints within the jurisdiction of the Department. Under 27A O.S. section 2–3–503, if the Department undertakes an enforcement action as a result of a complaint, the Department notifies the complainant of the enforcement action by mail. The state program in 27A O.S. section 2–3–503 offers the complainant an opportunity to provide written information pertinent to the complaint within fourteen (14) calendar days after the date of the mailing. The state program also goes further in 27A O.S. section 2–3–104 stating that the complaints program shall, in addition to the responsibilities specified by section 2–3–101, refer, upon written request, all complaints in which one of the complainants remains unsatisfied with the Department's resolution of said complaint to an outside source trained in mediation. These additional elements of the state's complaint process indicate that ODEQ takes public intervention seriously in enforcement actions.

EPA has determined that these requirements meet the level of public participation in the enforcement process required under RCRA 7004(b).

B. Adequacy of Technical Criteria

EPA has determined that ODEQ's CCR permit program meets the standard for approval in RCRA section 4005(d)(1)(B)(i), as it will require each CCR unit located in Oklahoma to achieve compliance with the applicable criteria for CCR units under 40 CFR part 257 or with other state criteria that the Administrator, after consultation with

[6] Under 12 OK Stat section 12–2024, intervention by right is allowed when a statute confers an unconditional right to intervene; or when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest.

the state, has determined to be at least as protective as the criteria in part 257. To make this determination, EPA compared ODEQ's proposed CCR permit program to 40 CFR part 257 to determine whether it differed from the Federal requirements, and if so, whether those differences met the standard for approval in RCRA section 4005(d)(1)(B)(ii) and (C).

Oklahoma has adopted all but two of the technical criteria at 40 CFR part 257, subpart D, into its regulations at OAC Title 252 Chapter 517. The two exceptions are discussed in sections 1 and 2 below.

While ODEQ's CCR permit program also includes some modification of 40 CFR part 257, subpart D, the majority of ODEQ's modifications were needed to allow the state to implement the part 257 criteria through a permit process. As mentioned above, the 40 CFR part 257, subpart D, rules were meant to be implemented directly by the regulated facility, without the oversight of any regulatory authority, such as a state permitting program. ODEQ thus needed to make some changes to the part 257 regulations to allow it to implement the permit program. Examples of these changes include the addition of language to require submittal and approval of plans to ODEQ, and of permitting provisions to allow the ODEQ to administer the CCR rules in the context of a permitting program. ODEQ also made some minor modifications to address state-specific issues: For example, the state did not incorporate 40 CFR 257.61(a)(2)(iv), which references the Marine Protection, Research, and Sanctuaries Act (MPRSA) requirements because Oklahoma does not have any coastal or ocean environments which apply under the MPRSA regulations. Oklahoma also included provisions to integrate purely state-law requirements into the Federal criteria—such as state-specific locations restrictions; procedures for subsurface investigation; and provisions addressing cost estimates and financial assurance. EPA considers these revisions to be administrative ones, that they do not substantively modify the Federal technical criteria.[7]

Other minor changes made by ODEQ to the 40 CFR part 257, subpart D, criteria reflect the integration of the CCR rules with the responsibilities of other state agencies or state specific conditions. Additional changes include removal of the web link to EPA publication SW–846 under the definition ''*Representative Sample*'' in 40 CFR 257.53; and the replacement of 40 CFR 257.91(e) with a reference to the Oklahoma Water Resources Board (OWRB) section 785:35–7–2. A few changes were made inadvertently including a typographic error in Chapter 517–9–4(g)(5) and the inadvertent removal of the words ''*and the leachate collection and removal*'' from section 252:517–11–1(e)(1). The state has updated their rule language to correct the errors.

EPA finds these references to OWRB standards to be minor because the key aspects of the CCR program, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification and internet posting requirements, are not substantially changed or reduced and in one example, are more stringent. These changes do not keep the overall program from being at least as protective as 40 CFR part 257, subpart D. EPA's full analysis of Oklahoma's CCR permit program can be found in the Technical Support Document, located in the docket for this document.

1. Adequacy of State Analog to 40 CFR 257.3–1 Regarding Floodplains

The current Federal criteria at § 257.3–1 addresses location of CCR units in floodplains as follows:

Facilities or practices in floodplains cannot restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources.

(1) Base flood means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(2) Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the base flood.

(3) Washout means the carrying away of solid waste by waters of the base flood.

Oklahoma's floodplain requirement at section 252:517–5–9 states that no waste management or disposal area of a CCR unit can be located within the 100-year floodplain except: (1) CCR units that were permitted before April 9, 1994 and that meet the same criteria under the Federal floodplain standards at 40 CFR 257.3–1 and summarized above; and (2) units that have received an authorized variance for waste management or disposal areas of new CCR units, or expansions of waste management or disposal areas of existing units, provided the variance is conditioned upon the subsequent redefinition of the floodplain to not include the land area proposed by the variance.

Discussions with ODEQ provided additional information regarding how the variance is implemented.[8] Specifically, to qualify for the variance, facilities may employ engineering solutions such as building a dike, changing the flow of water or changing the elevation of the area, and seek to have the floodplain redefined not to include the land area of the new or expanded unit. To authorize the redefinition of the floodplain based on these engineering solutions, an application is submitted by the facility to the Federal Emergency Management Administration (FEMA) for receipt of a Letter of Map Revision (LOMR). If approved, the facility first receives a Conditional Letter of Map Revision (CLOMR) allowing construction of the unit and the engineering solutions per the conditions outlined in the CLOMR. If the conditions of the CLOMR are met, a LOMR is issued by FEMA authorizing that agency to revise the flood hazard map information so as not to include the land area of the new or expanded unit (see *https://www.fema.gov/flood-map-revision-processes#4* for additional information on the FEMA process).

ODEQ has stated that no CCR unit can begin receiving CCR until approval of the redefined floodplain by FEMA and receipt of the LOMR by the facility. Based on all of these facts, EPA has determined that the Oklahoma floodplain standard would be at least as protective as the Federal part 257 standard.

2. Adequacy of State Analog to 40 CFR 257.3–2

As noted previously, Oklahoma has not adopted the Federal regulation, but is relying on its existing state regulation at OAC 252:517–5–8. EPA has determined that this regulation meets the standard for approval in RCRA section 4005(d)(1)(B)(ii) and (C) as it is at least as protective as the Federal criteria in 40 CFR 257.3–2.

OAC 252:517–5–8. Endangered or Threatened Species requires that for a new CCR unit, or expansion of the permit boundary of an existing CCR unit, a statement from the Oklahoma Department of Wildlife Conservation (ODWC) and from the Oklahoma Biological Survey (OBS), must be submitted regarding current information

[7] List of revisions included in the docket for this document.

[8] See summary of call with ODEQ May 31, 2018 included in the docket for this authorization.

about endangered or threatened wildlife or plant species listed in state and Federal laws, that exist within one mile of the permit boundary or expansion area. If threatened or endangered species exist within, or periodically utilize any area within, or within one mile of, the permit boundary or expansion area, the projected impacts on the identified species must be addressed, and measures specified to avoid or mitigate the impacts.

When impacts are unavoidable, a mitigation plan that has been approved by ODWC for wildlife or OBS for plants, must be submitted to ODEQ. ODEQ confirmed the language in OAC 252:517–5–8 includes fish. See OAC 800:25–19–6.

EPA has compared the existing Federal CCR regulations at 40 CFR 257.52 with ODEQ's act and regulation and has determined that ODEQ's provision is at least as protective as the Federal CCR provision. Specifically, the term ''impact'' in the state rule is consistent with ''taking'' in the Federal rule. Pursuant to 40 CFR 257.3–2(a), facilities or practices cannot cause or contribute to the taking of an endangered or threatened species. All the actions included in the definition of ''taking'' in 40 CFR 257.3–2(b)(3) can have an impact on a particular species and therefore fall within the scope of OAC 252:517–5–8(a).

Pursuant to OAC 252:517–5–8(1), the facility must address any projected impact on any threatened or endangered species that exists within or periodically utilizes any area within one mile of the permit boundary or proposed area of expansion. Furthermore, the facility must specify measures to avoid or mitigate the projected impacts. The state interprets this provision to include any destruction or adverse modification of critical habitat of the endangered/threatened species, as that would have an impact on the species.

The Federal provision has no time-specific trigger of when any review, etc. is to occur. The state provision requires that the facility, upon the proposed permitting of a new CCR unit or the expansion of a facility's permit boundaries, shall provide confirmation from the OBS of any state and Federal listed threatened or endangered species that can be found within a mile of the facility or expansion area. Due to the inclusion of state-listed species, EPA has read this provision to be more protective than the Federal requirements.

Pursuant to OAC 252:517–5–8(2), if a projected impact is determined to be unavoidable, the facility must develop and submit a mitigation plan to ODWC or OBS for approval. An approved plan must be submitted to ODEQ with the permit application for the new CCR unit or expansion of the permitted boundary. In the event a Federal listed species is involved, ODWC refers the matter to USFWS. For purposes of wetlands, OAC 252:517–5–2(a)(2)(C) contains the same restrictions as 40 CFR 257.61(a)(2)(iii). Any additional ESA requirements beyond what is set out in the Federal and state provisions being compared must still be complied with by all facilities under ODEQ's rules. OAC 252:517–1–2 expressly provides that compliance with Chapter 517 does not affect the need for a CCR facility to comply with any other applicable Federal, state, tribal, or local laws or requirements. Therefore, compliance with Chapter 517 does not preclude any additional ESA requirements.

Overall, based on our analysis, EPA concludes that Oklahoma's Endangered Species Act provisions are as protective as the Federal standards.

C. EPA Responses to Major Comments on the Proposed Determination

Below is a summary of the major comments received on the February 20, 2018, proposed notification: Approval of Coal Combustion Residuals State Permit Programs: Oklahoma. (EPA–HQ–OLEM–2017–0613–0013). The major comments received focused on three primary topics: Facility compliance with (and state oversite of) state and Federal groundwater protection standards for CCR units, public participation under the Oklahoma CCR permitting program and facility compliance with the Endangered Species Act. Responses to all other comments received are summarized in the Response to Comments document included in the docket for this document.

Commenters raised a number of questions or concerns about compliance issues at individual facilities, with varying specificity and supporting data. EPA is not making any determinations regarding the compliance status of individual facilities based on the public comment process for this action. However, some commenters raised these concerns about compliance issues in the broader context of program approval, and questioned whether Oklahoma has the ability and inclination to fully implement an approved program. EPA has reviewed all significant comments on this issue, and has identified evidence of actions taken by ODEQ to address instances of non-compliance through notices and consent orders.

EPA reviews of state program applications focus primarily on the legal and regulatory framework that the state puts forward. The Agency has determined that the underlying statutes and regulations, provide Oklahoma the authority to implement the program, and that there is evidence that Oklahoma has utilized its authority to implement these provisions since it adopted the Federal standards in 2016, and also prior to that time. Given that Oklahoma is in the early stages of implementing its new CCR rules, it is not unexpected that compliance with those rules across the state may be evolving. EPA does not view instances of non-compliance as a reason to deny approval of a State program. Implementation and enforcement of Oklahoma's CCR requirements in Oklahoma are expected to continue, and enforcement of those provisions may be initiated not only by ODEQ, but also by EPA or citizens, as appropriate. In accordance with the WIIN Act, the Agency must also conduct continuing periodic reviews of state permit programs (see Section IV below for additional details).

1. Compliance With Groundwater Standards

Comments: When CCR is dumped without proper safeguards, hazardous chemicals are released to groundwater, surface water, soil and air, and nearby communities and ecosystems are harmed. There is evidence that CCR regulatory oversight by state agencies has failed to prevent contamination of Oklahoma's fresh groundwater or CCR from blowing into and harming Oklahoma communities.

For example, recent groundwater monitoring conducted at Oklahoma CCR units pursuant to the Federal CCR rule shows that groundwater can contain contaminants at levels significantly higher than the corresponding Maximum Concentration Levels (MCLs) established under the Safe Drinking Water Act.[9] Other harmful metals were found in concentrations multiple times greater than the Regional Screening Levels for tap water. Chloride, fluoride, sulfate and total dissolved solids (''TDS'')—all indicators of coal ash pollution—were also found in elevated concentrations in the groundwater. Other recent groundwater testing showed high concentrations of arsenic, lead, mercury, nickel, selenium, and vanadium.

Response: Under both the Federal CCR regulations and the state program,

[9] Maximum Contaminant Levels (MCLs) are standards that are set by the EPA for drinking water quality. An MCL is the legal threshold limit on the amount of a substance that is allowed in public water systems under the Safe Drinking Water Act.

the determination that a release has occurred that may result in contamination of groundwater is not determined solely by contaminant concentrations that exceed an MCL or Regional Screening Levels cited above.[10] Rather, it is first determined if those exceedances represent statistically significant increases (SSIs) of Appendix III and IV contaminants over background levels. Corrective action is required when there is an SSI of any Appendix IV contaminants that exceeds the groundwater protection standard, typically set at the applicable MCL. (See 40 CFR 257.96(a), OAC 252–917–9–5,6).

Public comments and EPA's analysis both indicate that some Oklahoma CCR units may not currently be in compliance with OAC standards requiring the establishment of a groundwater monitoring program and the posting of the first annual groundwater monitoring report.[11] As discussed above, the state is addressing such instances of noncompliance through inspection or investigation. In general, ODEQ may give the owner or operator of the unit a written notice of the specific violation and the duty to correct it (a notice of deficiency). The failure to do so can result in the issuance of a compliance order (CO). If the owner or operator fails to come into compliance or fails to agree to a schedule to come into compliance, the Department may issue a CO, which becomes final within fifteen days unless an administrative enforcement hearing is requested. The CO may assess administrative penalties for each day the owner or operator fails to comply. If a facility does not comply with a CO or an administrative compliance order (ACO) within the specified time frames, an Assessment Order to impose an additional penalty may be issued. ODEQ may also pursue action in District Court for an injunction to require a facility to comply and, in rare and extreme instances, may seek to revoke or suspend the permit of a facility. Criminal enforcement proceedings may also be pursued in some instances.[12]

Oklahoma has provided evidence that it has taken actions to ensure that all CCR facilities covered by the OAC standards are either complying with or will be put on a schedule to comply with the applicable groundwater monitoring requirements.[13]

The Agency notes that Oklahoma facilities have submitted most of the compliance documents that are required to be placed on the facilities' internet site (see OAC 252:517–19–1). Oklahoma has provided information to EPA about its current enforcement strategy for this requirement. Specifically, when documents that are required to be posted to the internet are received, permit engineers will check to ensure those documents have been posted to a facility's website. Compliance inspections will include website reviews as part of records checks during annual, in-depth inspections. Failure to maintain required documents on a facility's public website will be handled similarly to a deficient record, and as an issue of noncompliance.[14]

2. Public Participation

i. Permitting and Enforcement

Comments: Oklahoma's CCR program fails to provide adequate opportunities for public participation in the development, revision, implementation, and enforcement of its CCR regulations. For permitting, the program fails to require new CCR units to submit key compliance proposals and compliance demonstrations in permit applications, such as groundwater monitoring plans, sampling and analysis plan, plans and specifications relating to design requirements (*i.e.* structural stability assessments), retrofit plans and post-closure care plans. The public is not provided an opportunity to review and comment on those documents during the permitting process. For existing CCR units, Oklahoma is entirely depriving the public of any opportunity to review and comment on permit applications, associated supporting documents, and even the CCR unit's permit itself prior to issuance of that permit.

Oklahoma's program grants CCR units a ''permit for life'' without providing the public any opportunity to review and comment on those critical site-specific compliance documents before the permitting decision is made.

Finally, Oklahoma failed to show that its CCR program affords the public participation opportunities in enforcement required by RCRA section 7004(b)(1) and set forth in 40 CFR 239.75. Specifically, the state has not shown that it provides for citizen intervention in civil enforcement proceedings.

Response: The Agency does not agree that the Oklahoma program fails to provide public participation opportunities for enforcement and for permitting. State regulations require new CCR units to submit plans containing compliance proposals and compliance demonstrations in permit applications. As discussed in section III. A. (1), Oklahoma statutes and regulations (section 27A–2–14–201(B)(1) and OAC 252:4–7–58 through 60) set out the appropriate tier for processing permit applications and modifications. These classifications are consistent with the requirements for all other Oklahoma solid waste disposal facilities (OAC 252:4–7–58 through 60 apply to all solid waste disposal facilities).

All plans and subsequent modifications fall within the permitting tier classifications and are approved either through review and action on an original permit application or as a subsequent modification to that permit. The permit general conditions provide that any permit noncompliance, including noncompliance with the original permit or any subsequent permit modification, is grounds for an enforcement action. ODEQ has the authority to evaluate permit applications for administrative and technical completeness and request changes,[15] revisions, corrections, or supplemental submissions to ensure consistency with the Chapter 517 code and all rules. ODEQ may also evaluate plans or other supplemental attachments to applications for sufficiency of content and compliance and require that omissions or inaccuracies be remedied.

Regarding lack of public participation for existing permits for CCR landfills, each application and permit would have been required to provide the appropriate public participation opportunities when those permits were issued. When the permits are modified, the OAC will require public participation according to the established tiering classifications in UEPA (see section 27A–2–14–201(B)(1) and OAC 252:4–7–58 through 60). Examples of Tier II modifications for previously permitted CCR landfills are provided in the docket for this action. Each Tier II or Tier III modification allows for the opportunity for public participation.

Unlike CCR landfill units, surface impoundments were not previously permitted by ODEQ. In accordance with state and Federal CCR standards, permit applications for surface impoundments for regulation under OAC 252:517 must be submitted to ODEQ by October 2018.

[10] RSLs are screening levels generally used for Superfund sites to determine the need for further remedial action. *www.epa/risk/regional-screening-levels.*

[11] October 17, 2017 was the compliance deadline for instillation of groundwater monitoring, sampling and analysis and initial detection monitoring (see 40 CFR 257.90).

[12] Email from Patrick Riley, ODEQ to Mary Jackson, EPA. April 27, 2018. Included in the docket for this authorization.

[13] Ibid.

[14] Ibid.

[15] Oklahoma CCR Program Application in docket for this document.

These new surface impoundment permits authorizing disposal of CCR generated onsite, will follow ODEQs Tier II process and provide opportunity for public participation.

Nothing in the Federal rule prohibits granting such permits for life. The life of a CCR unit begins when it is initially permitted for waste disposal and continues through active operations, closure of the unit, and conclusion of the post-closure monitoring period. The post-closure period begins at closure and continues for a minimum of 30 years. With the exception of an ODEQ enforcement action to revoke a facility's permit, a facility's permit will not terminate until the facility successfully completes closure, post-closure and any corrective action requirements. The facility's closure, post-closure, and corrective action plans are all available through ODEQ and on the facility's publicly accessible internet site. The ability for the public to comment on the initial plans and any subsequent modifications will depend on the associated permitting tier classification when applications for modifications are submitted to ODEQ.

Regarding public participation opportunities in enforcement required by RCRA section 7004(b)(1), ODEQ has reaffirmed that its CCR program allows intervention by right (see 12 OK Stat section 12–2024).[16] In addition, ODEQ's CCR program provides a process to respond to citizen complaints (see 27A O.S. section 2–3–101,503) and by not opposing citizen intervention when allowed by statute (see 27A O.S. section 2–7–133). In the event any member of the public believes a facility is not in compliance with any permitting requirement, the ODEQ complaints program requires investigation and the expedient resolution of complaints involving noncompliance with statutory, regulatory, and permitting requirements. *See ODEQ* Application on page 8. In the event a complainant remains unsatisfied with the resolution of a complaint, mediation is available by statute. *See ODEQ* Application on page 9.

This satisfies the civil intervention requirement at 40 CFR 239.9(a), and on that basis, EPA considers the requirements of RCRA section 7004(b) satisfied.

ii. Permit Modifications

Comment: Most permit modifications are Tier I, which does not require public participation.

Response: The Agency agrees that under OAC rules, most permit modifications are Tier I since they address minor or administrative changes to the permit, which can occur frequently. All existing CCR landfills in the state submitted Tier I modification requests to change the applicable standards in their permit from the previous state solid waste standards at OAC 252:215 to the new CCR standards at OAC 252:217. As a Tier I modification, the public would not have had opportunity for input into these 252:517 CCR landfill permits. Further, the public will not have opportunity for comment on these ''permits for life'' in the future unless the permit is modified under a Tier II or Tier III modification (see preceding discussion on comment/response above).

Based on information submitted by the state comparing standards under OAC 252:215 and OAC 252:217 (included in the docket for this authorization), the Agency has concluded that for existing landfill units, the standards under the two sets of regulations were substantially the same and the public participation opportunities were appropriate. Specifically, as indicated previously, each application and permit issuance under OAC 252:515, including permit modifications, would have included the public participation opportunities that were required when those permits were issued. Public participation requirements under the previous program in OAC 252:515 and the current program in OAC 252:517 are authorized by the same standard under Oklahoma UEPA (27A O.S. section 2–14–104).

As discussed above, permit applications for new units classified as Tier II (for on-site facilities) and Tier III (for off-site facilities) require public notice and comment and the opportunity for a public hearing. In the case of Tier II and III applications that do not receive timely comments or public meeting requests and for which no public meeting was held, ODEQ considers the comments and then prepares a response to comments prior to final permit issuance determinations. The Department makes available Tier II applications and draft permits and Tier III applications, draft permits, and proposed permits on the Department's website.[17]

As discussed, Tier II and III permit modifications focus on substantive changes and require public participation for any permit modifications not specifically covered under Tier I. The Tier II and III permit application processes include: Published notice of the application filing, published notice of the draft permit or denial, and opportunity for a public meeting. In determining the appropriate Tier for an application, the significance of the potential impact on the environment and other criteria outlined in III. A. 1 are considered.

iii. Endangered Species Act

Comment: Under the ESA, Federal agencies must, in consultation with FWS and/or NMFS, insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. 1536(a)(2). An agency proposing an action must first determine whether the action ''may affect'' species listed as threatened or endangered under the ESA. 50 CFR 402.14. EPA's proposal to approve Oklahoma's Application creates a significant risk that CCR units in the state would pollute water more than if EPA did not approve that Application, and thus the proposed action may affect listed species within the meaning of 50 CFR 402.14. As a result, EPA must initiate consultation with FWS and NMFS under ESA Section 7 prior to making a final determination as to whether to approve or deny Oklahoma's Application. See generally Nat'l Parks Conservation Ass'n v. Jewell, 62 F. Supp. 3d at 17 (finding that a 2008 rule revising standards for coal mining near streams may affect listed species where there was ''clear evidence that habitats within stream buffer zones are home to threatened and endangered species and that mining operations affect the environment, water quality, and all living biota'').

Response: As discussed in section III.B.2, EPA has concluded that Oklahoma's regulation applicable to endangered and threatened species (OAC 252:517–5–8) is at least as protective as the Federal criteria in 40 CFR 257.3–2. Having made this determination, RCRA section 4005(d)(1)(C) expressly mandates that EPA approve the state's program. Therefore, consistent with 50 CFR 402.03, the requirement for EPA to consult under section 7(a)(2) of the ESA does not apply to this action.

IV. Approval of the ODEQ CCR Permitting Program

On July 30, 2018, for those CCR units that are currently permitted and regulated by ODEQ under OAC 252:517,

[16] Email from Patrick Riley, ODEQ to Mary Jackson, EPA April 27, 2018. Included in the docket for this authorization.

[17] Oklahoma CCR Program Application in docket for this document.

such permits will be in effect in lieu of the Federal 40 CFR part 257, subpart D, CCR regulations. For those CCR units that are not yet permitted, the Federal regulations at part 257 will remain in effect until such time that ODEQ issues permits under this CCR program for those units.

The WIIN Act specifies that EPA will review a state CCR permit program:

- From time to time, as the Administrator determines necessary, but not less frequently than once every 12 years;
- Not later than 3 years after the date on which the Administrator revises the applicable criteria for CCR units under part 257 of title 40, CFR (or successor regulations promulgated pursuant to sections 1008(a)(3) and 4004(a));
- Not later than 1 year after the date of a significant release (as defined by the Administrator), that was not authorized at the time the release occurred, from a CCR unit located in the state; and
- In request of any other state that asserts that the soil, groundwater, or surface water of the state is or is likely to be adversely affected by a release or potential release from a CCR unit located in the state for which the program was approved.

The WIIN Act also provides that in a state with an approved CCR permitting program, the Administrator may commence an administrative or judicial enforcement action under section 3008 if:

- The state requests that the Administrator provide assistance in the performance of an enforcement action; or
- After consideration of any other administrative or judicial enforcement action involving the CCR unit, the Administrator determines that an enforcement action is likely to be necessary to ensure that the CCR unit is operating in accordance with the criteria established under the state's permit program.

Further, in the case of an enforcement action by the Administrator, before issuing an order or commencing a civil action, the Administrator shall notify the state in which the coal combustion residuals unit is located.

V. Action

In accordance with 42 U.S.C. 6945(d), EPA is approving ODEQ's CCR permit program application.

Dated: June 18, 2018.

E. Scott Pruitt,

Administrator.

[FR Doc. 2018–13461 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PS Docket Nos. 13–87, 06–229; WT Docket No. 96–86, RM–11433, RM–11577; FCC 16–111]

Service Rules Governing Narrowband Operations in the 769–775/799–805 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends the Commission's rules to promote spectrum efficiency, interoperability, and flexibility in 700 MHz public safety narrowband (769–775/799–805 MHz).

DATES: Effective July 30, 2018.

FOR FURTHER INFORMATION CONTACT: John A. Evanoff, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0848 or *john.evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order on Reconsideration* in PS Docket No. 13–87, FCC 18–11, released on February 12, 2018, and corrected by *Erratum* released on May 10, 2018. The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

In this *Second Report and Order,* the Commission amends and clarifies the Commission's 700 MHz narrowband (769–775/799–805 MHz) interoperability and technical rules. Specifically, this *Second Report and Order* (1) amends and clarifies the rules to exempt 700 MHz low-power Vehicular Repeater Systems (VRS) from the 700 MHz trunking requirements; (2) amends the rules to ensure that 700 MHz public safety licensees receive information on the basis of vendor assertions that equipment is interoperable across vendors and complies with Project 25 (P25) standards; and (3) amends the rules to require that all narrowband mobile and portable 700 MHz public safety radios, as supplied to the ultimate user, must be capable of operating on all of the narrowband nationwide interoperability channels without addition of hardware, firmware, or software, and must be interoperable across vendors and operate in conformance with P25 standards.

In the companion *Order on Reconsideration,* the Commission addresses the Petition for Partial Reconsideration filed by Motorola Solutions, Inc. (Motorola), which requested that the Commission postpone the effective date of certain previously adopted rules (*i.e.* 47 CFR Sections 2.1033(c) and 90.548(c)) until complementary proposals that were the subject of the *Further Notice of Proposed Rulemaking* in this proceeding are resolved. As requested by Motorola, we adopt a uniform effective date for the rules that were the subject of the Motorola Petition for Partial Reconsideration and the rules newly adopted in this *Second Report and Order.*

Procedural Matters

The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix A of the *Second Report and Order and Order on Reconsideration.*

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Further Notice of Proposed Rule Making (FNPRM)* in PS Docket No. 13–87 released on August 22, 2016. *See* 81 FR 65984 (2016). The Commission sought written public comment on proposals in the *FNPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Final Rules

In the *Second Report and Order* in this proceeding, we amend the interoperability and technical rules governing 700 MHz public safety narrowband spectrum (769–775 MHz and 799–805 MHz). The rule changes promote interoperable and efficient use of 700 MHz public safety narrowband spectrum while reducing the regulatory burdens on public safety entities, manufacturers and other stakeholders wherever possible. In order to achieve these objectives, we revise the rules to exempt low power vehicular repeater

systems (VRS) from the narrowband trunking requirements. Exempting low power VRS from the trunking requirements will facilitate rapid deployment of such systems as well as reduce compliance burdens on public safety entities that currently lack access to trunked equipment. We also amend the rule to clarify that the trunking requirement applies to fixed infrastructure.

We adopt a list of feature sets and capabilities that must be tested in order to ensure that radios operating in the conventional mode on the designated 700 MHz narrowband interoperability channels are in fact interoperable across vendors. Adopting such a list promotes certainty for public safety and manufacturers and promotes competition in the public safety equipment market.

We amend the rules concerning the requirement that 700 MHz radios be capable of being programmed to operate on the designated 700 MHz narrowband interoperability channels. Clarification provides greater certainty to equipment manufacturers on the required performance of their equipment.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

Response to Comments by Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Final Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.'' A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Public Safety Radio Licensees. As a general matter, Public Safety Radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services. There are 1,476 licenses in the 700 MHz band, based on an FCC Universal Licensing System search of May 25, 2017. Public Safety Radio licensees are not required to disclose information about number of employees, therefore the Commission does not have information that could be used to determine how many Public Safety Radio licensees constitute small entities under this definition. Nevertheless, we estimate that fewer than 486 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by the establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The Small Business Administration has established a size standard for this industry of 750 employees or fewer. U.S. Census data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry is small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The rules adopted in the *Second Report and Order* will not entail additional reporting, recordkeeping, and/or third-party consultation for small entities to comply.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.''

The *Second Report and Order* changes the interoperability and technical rules covering operation of public safety systems on narrowband spectrum in the 700 MHz band. Specifically, the Second Report and Order amends Section 90.537 of the Commission's rules to promote efficient use of public safety narrowband spectrum in the band while reducing economic burdens on licensees. For the 700 MHz General Use and State License channels, Section 90.537 provides that ''[a]ll systems using six or more narrowband channels in the 769–775 MHz and 799–805 MHz frequency bands must be trunked systems, except for those described in paragraph (b) of this section.'' In order to strike the proper balance between spectrum efficiency and operational needs as well as avoid unnecessary costs to public safety, the Second Report and Order exempts low power vehicular repeaters from the 700 MHz narrowband trunking requirements and clarifies that the trunking requirement applies to individual transmitter sites.

The *Second Report and Order* maximizes interoperability by adopting a list of feature sets and capabilities in radios designed to operate in the conventional mode on the designated 700 MHz narrowband interoperability channels. Currently, the Commission's rules do not specify feature sets or capabilities that should be tested in order to promote interoperability across vendors and between users. Thus, it would be beneficial to incorporate into our rules specific feature sets and capabilities that must be tested for radios designed to operate on the 700 MHz narrowband interoperability channels. To minimize burdens, the *Second Report and Order* clarifies that manufacturers may employ their own testing protocol, declines to require manufacturers to test non-voice features and capabilities, and refrains from imposing new reporting and record keeping requirements on stakeholders.

Finally, the *Second Report and Order* amends the rules concerning the requirement that 700 MHz radios be capable of being programmed to operate on the designated interoperability channels. Amendment provides greater certainty to equipment manufacturers on the required performance of their equipment. Amending the rule obviates the need for imposing new requirements on public safety and manufacturers.

Report to Congress

The Commission will send a copy of the *Second Report and Order,* including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Second Report and Order,* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Paperwork Reduction Act of 1995 Analysis

This document does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

Congressional Review Act

The Commission will send a copy of this *Second Report and Order and Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 303, 316, 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, 316, 332, and 337, this Second Report and Order *is hereby adopted*.

It is further ordered that §§ 2.1033(c)(20), 90.537, 90.547 and 90.548 of the Commission's rules, 47 CFR 2.1033(c)(20), 90.537, 90.547, and 90.548, are *amended* as set forth in Appendix B. The amendments to §§ 2.1033(c)(20), 90.537, 90.547 and 90.548 of the Commission's rules, 47 CFR 2.1033(c)(20), 90.537, 90.547 and 90.548, shall become effective thirty days after publication of this *Second Report and Order* in the **Federal Register**.

It is further ordered that the Petition for Clarification of Motorola Solutions, Inc. filed March 1, 2016, *is granted*, to the extent discussed in this *Second Report and Order.*

It is further ordered, pursuant to sections 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and 405(a), and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Petition for Partial Reconsideration filed October 31, 2016, by Motorola Solutions, Inc. *is granted* to the extent discussed in this *Second Report and Order and Order on Reconsideration.*

It is further ordered, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the Commission *shall send* a copy of this *Second Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 2 and 90

Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 90 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 307, 336, and 337, unless otherwise noted.

■ 2. Section 2.1033 is amended by revising paragraph (c)(20) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(c) * * *

(20) Before equipment operating under part 90 of this chapter and capable of operating on the 700 MHz interoperability channels (See § 90.531(b)(1) of this chapter) may be marketed or sold, the manufacturer thereof shall have a Compliance Assessment Program Supplier's Declaration of Compliance and Summary Test Report or, alternatively, a document detailing how the manufacturer determined that its equipment complies with § 90.548 of this chapter and that the equipment is interoperable across vendors. Submission of a 700 MHz narrowband radio for certification will constitute a representation by the manufacturer that the radio will be shown, by testing, to be interoperable across vendors before it is marketed or sold.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICE

■ 3. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

■ 4. Section 90.537 is amended by revising paragraph (a) to read as follows:

§ 90.537 Trunking requirement.

(a) *General use and State License channels.* All fixed transmitter sites using six or more narrowband channels in the 769–775 MHz and 799–805 MHz frequency bands must be trunked, except for those described in paragraph (b) of this section. This paragraph does not apply to Vehicular Repeater Systems (MO3) authorized on the General Use and State License channels listed in § 90.531(b).

* * * * *

■ 5. Section 90.547 is amended by revising paragraph (a) introductory text to read as follows:

§ 90.547 Narrowband Interoperability channel capability requirement.

(a) Except as noted in this section, mobile and portable transmitters operating on narrowband channels in the 769–775 MHz and 799–805 MHz frequency bands must be capable of operating on all of the designated nationwide narrowband Interoperability channels pursuant to the standards specified in this part. Provided, however, that the licensee need not program such transmitters to make all interoperability channels accessible to the end user.

* * * * *

■ 6. Section 90.548 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 90.548 Interoperability Technical Standards.

* * * * *

(c) Transceivers capable of operating on the narrowband Interoperability channels listed in § 90.531(b)(1) shall not be marketed or sold unless the transceiver has previously been certified for interoperability by the Compliance Assessment Program (CAP) administered by the U.S. Department of Homeland Security; provided, however, that this requirement is suspended if the CAP is discontinued. Submission of a 700 MHz narrowband radio for certification will constitute a representation by the manufacturer that the radio will be shown, by testing, to be interoperable across vendors before it is marketed or sold. In the alternative, manufacturers may employ their own protocol for verifying compliance with Project 25 standards and determining that their product is interoperable among vendors. In the event that field experience reveals that a transceiver is not interoperable, the Commission may require the manufacturer thereof to provide evidence of compliance with this section.

(d) Transceivers capable of conventional operations on the narrowband Interoperability channels listed in § 90.531(b)(1) must, at a minimum, include the following feature sets and capabilities while operating in the conventional mode to be validated for compliance with the Project 25 standards consistent with § 2.1033(c)(20) of this chapter and paragraph (c) of this section.

(1) A subscriber unit must be capable of issuing group calls in a conventional system in conformance with the following standards: TIA 102.BAAD–B Conventional Procedures (2015), Section 6.1 with validation testing according to TIA–102.CABA Interoperability Testing for Voice Operation in Conventional Systems (2010), Test Case 2.2.2.4.1, and Test Case 2.4.2.4.1.

(2) Two Project 25 standard squelch modes, Monitor Squelch and Normal Squelch, must be supported in conformance with the following standards: TIA 102.BAAD–B Conventional Procedures (2015), Section 6.1.1.3 with validation testing according to TIA–102.CABA Conventional Interoperability Testing for Voice Operation in Conventional Systems (2010), Test Case 2.2.3.4.1, Test Case 2.2.1.4.1 (Direct, normal squelch), Test Case 2.4.9.4.1 (Repeated, monitor squelch), and Test Case 2.4.1.4.1 (Repeated, normal squelch).

(3) A subscriber unit must properly implement conventional network access codes values (NAC) of $293 and $F7E in conformance with the following standards: TIA–102.BAAC–C Common Air Interface Reserved Values (2011), Section 2.1 with validation testing according to TIA–102.CABA Interoperability Testing for Voice Operation in Conventional Systems (2010), Test Case 2.2.1.4.1 and Test Case 2.2.8.4.1.

(4) A fixed conventional repeater must be able to repeat the correct/matching network access code (NAC) for all subscriber call types (clear and encrypted) using the same output NAC in conformance with the following standards: TIA 102.BAAD–B Conventional Procedures (2015), Section 2.5 with validation testing according to TIA–102.CABA Interoperability Testing for Voice Operation in Conventional Systems (2010), Test Case 2.4.1.4.1, and Test Case 2.4.2.4.1.

(5) A fixed conventional repeater must be able to repeat the correct/matching network access code (NAC) for all subscriber call types (clear and encrypted) using a different output NAC in conformance with the following standards: TIA 102.BAAD–B Conventional Procedures (2015), Section 2.5 with validation testing according to TIA–102.CABA Interoperability Testing for Voice Operation in Conventional Systems (2010), Test Case 2.4.3.4.1 and Test Case 2.4.4.4.1.

(6) A fixed conventional repeater must be able to reject (no repeat) all input transmissions with incorrect network access code (NAC) in conformance with the following standard: TIA 102.BAAD–B Conventional Procedures (2015), Section 2.5 with validation testing according to TIA–102.CABA Interoperability Testing for Voice Operation in Conventional Systems (2010), Test Case 2.4.1.4.1, and Test Case 2.4.2.4.1.

(7) A fixed conventional repeater must be able to support the correct implementation of network access code (NAC) values $F7E and $F7F in conformance with the following standards: TIA 102.BAAD–B

Conventional Procedures (2015), Section 2.5 with validation testing according to TIA–102.CABA Interoperability Testing for Voice Operation in Conventional Systems (2010), Test Case 2.4.5.4.1, Test Case 2.4.6.4.1, and Test Case 2.4.7.4.1.

[FR Doc. 2018–13859 Filed 6–27–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 18–543; MB Docket No. 18–27; RM–11796]

Radio Broadcasting Services; Desert Hills, Arizona

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of L. Topaz Enterprises, Inc., the Audio Division amends the FM Table of Allotments by adding Channel 292A at Desert Hills, Arizona. We find that the public interest would be served by allotting a second local service at Desert Hills, Arizona. A staff engineering analysis indicates that Channel 292A can be added at Desert Hills, Arizona, as proposed, consistent with the minimum distance separation requirements of the Commission's rules without a site restriction. The reference coordinates are 34–32–58 NL and 114–22–2 WL.

DATES: Effective July 9, 2018.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 18–27, adopted May 25, 2018, and released May 25, 2018. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW, Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

■ 2. Section 73.202(b), the table is amended under Arizona, by adding Desert Hills, Channel 292A, in alphabetical order to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

	Channel No.
* * * * *	
Arizona	
* * * * *	
Desert Hills	292A
* * * * *	

* * * * *

[FR Doc. 2018–13794 Filed 6–27–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG317

Fisheries of the Exclusive Economic Zone Off Alaska; Alaska Plaice in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Alaska plaice in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2018 Alaska plaice total allowable catch (TAC) specified for the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 25, 2018, through 2400 hrs, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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 Alaska plaice TAC specified for the BSAI is 16,100 metric tons as established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that the 2018 Alaska plaice TAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 15,100 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Alaska plaice in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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 the directed fishery closure of Alaska plaice in the BSAI. NMFS was unable to publish a notice providing

time for public comment because the most recent, relevant data only became available as of June 22, 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 is exempt from review under Executive Order 12866.

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

Dated: June 25, 2018.

Alan D. Risenhoover,

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

[FR Doc. 2018–13918 Filed 6–25–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG316

Fisheries of the Exclusive Economic Zone Off Alaska; Other Flatfish in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for other flatfish in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2018 other flatfish total allowable catch (TAC) specified for the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 25, 2018, through 2400 hrs, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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 other flatfish TAC specified for the BSAI is 4,000 metric tons as established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that the 2018 other flatfish TAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,000 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Alaska plaice in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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 the directed fishery closure of other flatfish in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 22, 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 is exempt from review under Executive Order 12866.

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

Dated: June 25, 2018.

Alan D. Risenhoover,

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

[FR Doc. 2018–13917 Filed 6–25–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 125
Thursday, June 28, 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 ENERGY

10 CFR Parts 429 and 430

[EERE–2018–BT–TP–0004]

Energy Conservation Program: Test Procedures for Cooking Products, Notice of Petition for Rulemaking

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notification of petition for rulemaking; reopening of the public comment period.

SUMMARY: This document reopens the public comment period for submitting comments, data and information on the Association of Home Appliance Manufacturers (AHAM) petition to withdraw the conventional cooking top test procedure published on April 25, 2018. The public comment period closed on June 25, 2018 and is reopened for 21 days until July 19, 2018.

DATES: DOE is reopening the comment period for AHAM's petition to withdraw the cooking top test procedure published on April 25, 2018 (83 FR 17944). Submit comments July 19, 2018.

ADDRESSES: Interested persons are encouraged to submit comments, identified by ''Test Procedure Cooking Products Petition,'' by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: CookProducts2018TP0004@ee.doe.gov. Include the docket number EERE–2018–BT–TP–0004 in the subject line of the message.

Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121, identified by docket number EERE–2018–BT–TP–0004. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 586–6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Celia Sher, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW, Washington, DC 20585. Email: *Celia.Sher@hq.doe.gov;* (202) 287–6122.

SUPPLEMENTARY INFORMATION: On April 25, 2018, the U.S. Department of Energy (DOE) published a petition from AHAM requesting that DOE reconsider its final rule on Test Procedures for Cooking Products, Docket No. EERE–2012–BT–TP–0013, RIN 1904–AC71, 81 FR 91418 (Dec. 16, 2016) (Final Rule). In the petition, AHAM requested that DOE undertake rulemaking to withdraw the cooking top test procedure, while maintaining the repeal of the oven test procedure that was part of the Final Rule. 83 FR 17944. The notice of petition provided for the written submission of comments by June 25, 2018. AHAM requested an extension of the public comment period to allow additional time for AHAM and its members to provide data responsive to DOE's detailed inquiries regarding the petition. For the same reason, GE Appliances also requested an extension of the comment period.

DOE has determined that an extension of the public comment period is appropriate to allow interested parties additional time to submit comments for DOE's consideration. Thus, DOE is reopening the comment period by 21 days, until July 19, 2018. DOE will consider any comments received by midnight of July 19, 2018 to be timely submitted.

Signed in Washington, DC, on June 22, 2018.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2018–13927 Filed 6–27–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0431; Product Identifier 2018–NE–16–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines (IAE) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines with a certain high-pressure compressor (HPC) front hub installed. This proposed AD was prompted by corrosion found on the HPC front hub. This proposed AD would require replacing the HPC front hub with a part eligible for installation. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 13, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact International Aero Engines (IAE), 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0431; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0431; Product Identifier 2018–NE–16–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM 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 NPRM.

Discussion

We received a report that corrosion was found on HPC front hub, part number (P/N) 30G2401. The HPC front hub exhibited deposits that could not be removed using standard procedures and worsened over time. After further investigation, pitting corrosion was found below the painted surface. This condition, if not addressed, could result in uncontained HPC front hub release, damage to the engine, and damage to the airplane.

Related Service Information

We reviewed Section PW1000G–C–05–10–00–02A–288A–D of the PW1100G–JM Series Airworthiness Limitations Manual, P/N 5316993, dated September 30, 2015. Section PW1000G–C–05–10–00–02A–288A–D provides guidance for an approved FAA method of mixed model cycles since new calculation.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require removing from service the HPC front hub, P/N 30G2401, and replacing it with a part eligible for installation.

Costs of Compliance

We estimate that this proposed AD affects 16 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPC front hub	0 work-hours × $85 per hour = $0	$11,600	$11,600	$185,600

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

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

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

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

(2) 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

International Aero Engines: Docket No. FAA–2018–0431; Product Identifier 2018–NE–16–AD.

(a) Comments Due Date

We must receive comments by August 13, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines with high-pressure compressor (HPC) front hub, part number (P/N) 30G2401, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by corrosion found on the HPC front hub. We are issuing this AD to prevent cracking and failure of the HPC front hub. The unsafe condition, if not addressed, could result in uncontained HPC front hub release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Remove from service the HPC front hub, P/N 30G2401, within 120 days after the effective date of this AD, or as follows, whichever occurs later, and replace with a part eligible for installation:

(1) For PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, and PW1127G–JM engines, remove the HPC front hub before exceeding 6,180 cycles since new (CSN) or within five years since the ship date listed in Table 1 to paragraph (g) of this AD, whichever occurs first.

(2) For PW1130G–JM, PW1133GA–JM, and PW1133G–JM engines, remove the HPC front hub before exceeding 4,440 CSN or within four years since the ship date listed in Table 1 to paragraph (g) of this AD, whichever occurs first.

(3) For engines operating as a mix of models listed in paragraphs (g)(1) and (2) of this AD, remove the HPC front hub using a CSN calculated by an approved FAA method or within four years since the ship date listed in Table 1 to paragraph (g) of this AD, whichever occurs first. You may find guidance for an approved FAA method of mixed model CSN calculation in Section PW1000G–C–05–10–00–02A–288A–D of the PW1100G–JM Series Airworthiness Limitations Manual, P/N 5316993, dated September 30, 2015.

(4) For any HPC front hub, P/N 30G2401, whose serial number is not listed in Table 1 to paragraph (g) of this AD, use October 21, 2015, as the ship date.

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Table 1 to Paragraph (g) - Steel Front Hub Ship Date

Steel Front Hub Serial Number	Ship Date	Originally Installed in Engine Serial Number
LENCAJ3513	10/23/2015	P770121
LENCAJ4524	11/6/2015	P770125
LENCAJ2782	11/25/2015	P770126
LENCAJ2794	11/9/2015	P770127
LENCAJ4527	11/17/2015	P770128
LENCAJ3500	11/16/2015	P770129
LENCAJ4508	11/23/2015	P770130
LENCAJ3505	6/20/2016	P770131
LENCAJ4518	12/2/2015	P770132
LENCAJ3507	12/31/2015	P770133
LENCAJ2789	12/22/2015	P770134
LENCAJ4516	12/12/2015	P770135
LENCAJ3509	12/31/2015	P770136
LENCAJ3511	12/28/2015	P770137
LENCAJ4538	1/6/2016	P770138
LENCAJ4535	1/8/2016	P770139
LENCAJ2788	1/17/2016	P770140
LENCAJ4512	1/17/2016	P770141
LENCAJ3502	1/31/2016	P770142
LENCAJ3503	2/7/2016	P770143
LENCAJ4540	1/31/2016	P770144
LENCAJ3510	2/17/2016	P770145
LENCAJ4539	2/14/2016	P770146
LENCAJ4525	2/25/2016	P770147
LENCAJ4531	2/20/2016	P770148
LENCAJ4510	3/14/2016	P770149
LENCAJ4522	2/27/2016	P770150
LENCAJ3506	2/27/2016	P770151
LENCAJ4532	3/11/2016	P770153
LENCAJ3506	3/17/2016	P770154
LENCAJ4534	3/31/2016	P770155
LENCAJ4548	6/13/2016	P770160
LENCAJ4552	5/6/2016	P770161
LENCAJ4521	4/30/2016	P770163
LENCAJ4529	4/30/2016	P770164
LENCAJ4520	4/28/2016	P770165
LENCAJ4544	4/30/2016	P770166
LENCAJ4511	8/25/2016	P770167
LENCAJ4549	8/26/2016	P770168

LENCAJ4553	5/19/2016	P770169
LENCAJ4551	5/19/2016	P770170
LENCAJ4517	5/21/2016	P770171
LENCAJ4543	5/19/2016	P770172
LENCAJ4513	5/31/2016	P770173
LENCAJ4550	5/20/2016	P770174
LENCAJ4530	6/8/2016	P770175
LENCAJ4533	5/26/2016	P770176
LENCAJ4515	6/8/2016	P770177
LENCAJ4563	6/26/2016	P770178
LENCAJ4545	6/10/2016	P770179
LENCAJ4542	6/10/2016	P770180
LENCAJ4546	6/22/2016	P770181
LENCAJ4566	6/22/2016	P770182
LENCAJ4558	6/23/2016	P770183
LENCAJ4507	8/31/2016	P770184
LENCAK4516	8/29/2016	P770185
LENCAJ3508	7/8/2016	P770186
LENCAJ4572	6/30/2016	P770187
LENCAJ4573	6/28/2016	P770188
LENCAJ4555	6/29/2016	P770189
LENCAJ4565	6/30/2016	P770190
LENCAJ4559	7/5/2016	P770191
LENCAJ4570	7/16/2016	P770192
LENCAJ4560	7/23/2016	P770193
LENCAJ4571	7/23/2016	P770194
LENCAJ4562	7/25/2016	P770195
LENCAJ4526	8/12/2016	P770196
LENCAJ4561	8/9/2016	P770197
LENCAJ4504	7/29/2016	P770198
LENCAJ4579	8/7/2016	P770199
LENCAJ4519	8/3/2016	P770200
LENCAK4517	8/9/2016	P770201
LENCAJ4595	8/17/2016	P770202
LENCAK4523	8/30/2016	P770203
LENCAK4505	8/15/2016	P770204
LENCAJ4541	8/31/2016	P770205
LENCAJ4592	8/22/2016	P770206
LENCAJ4569	9/30/2016	P770207
LENCAK4512	8/29/2016	P770208
LENCAK4518	10/7/2016	P770210
LENCAK4541	8/31/2016	P770211
LENCAK4535	9/17/2016	P770212

LENCAJ4584	9/20/2016	P770213
LENCAK4538	9/3/2016	P770214
LENCAK4533	11/30/2016	P770215
LENCAJ4594	9/23/2016	P770216
LENCAJ4509	10/25/2016	P770217
LENCAK4526	9/16/2016	P770218
LENCAK4532	9/19/2016	P770219
LENCAJ4602	9/22/2016	P770220
LENCAK4513	9/27/2016	P770221
LENCAK5147	10/19/2016	P770222
LENCAK4536	10/19/2016	P770223
LENCAK4522	9/30/2016	P770224
LENCAJ4578	12/29/2016	P770225
LENCAJ4596	9/30/2016	P770226
LENCAJ4575	10/4/2017	P770227
LENCAJ4577	12/5/2016	P770228
LENCAJ4597	10/12/2016	P770229
LENCAJ4588	10/19/2016	P770230
LENCAK4552	10/14/2016	P770231
LENCAJ4537	10/29/2016	P770232
LENCAJ4586	10/21/2016	P770233
LENCAJ4528	11/18/2016	P770234
LENCAJ4554	12/29/2016	P770235
LENCAK4553	11/1/2016	P770236
LENCAJ4598	11/18/2016	P770237
LENCAK4550	12/5/2016	P770238
LENCAJ4603	12/5/2016	P770239
LENCAJ4585	12/5/2016	P770240
LENCAK4537	12/2/2016	P770241
LENCAK4520	11/8/2016	P770242
LENCAK4528	12/2/2016	P770243
LENCAK5171	11/30/2016	P770244
LENCAK4549	12/5/2016	P770245
LENCAJ4557	12/5/2016	P770246
LENCAK4515	12/7/2016	P770247
LENCAJ4601	1/8/2017	P770248
LENCAK4511	12/7/2016	P770249
LENCAJ4581	2/21/2017	P770250
LENCAK5182	11/30/2016	P770251
LENCAK5153	11/30/2016	P770252
LENCAJ4576	12/12/2016	P770253
LENCAK4539	2/26/2017	P770254
LENCAJ4591	8/23/2017	P770255

LENCAK5166	12/15/2016	P770256
LENCAK5193	12/17/2016	P770258
LENCAK5149	12/21/2016	P770259
LENCAK5157	3/28/2017	P770260
LENCAK5191	12/20/2016	P770261
LENCAK5176	12/20/2016	P770262
LENCAK4545	12/21/2016	P770263
LENCAK5192	12/22/2016	P770264
LENCAK4548	12/23/2016	P770265
LENCAK5154	12/27/2016	P770266
LENCAK5163	12/28/2016	P770267
LENCAK5184	12/23/2016	P770268
LENCAK4507	12/31/2016	P770269
LENCAK5165	2/2/2017	P770270
LENCAK5173	12/29/2016	P770271
LENCAJ4589	12/29/2016	P770272
LENCAK5179	12/31/2016	P770273
LENCAK4543	1/10/2017	P770275
LENCAK4510	3/31/2017	P770276
LENCAK5156	1/17/2017	P770277
LENCAK5169	1/16/2017	P770278
LENCAK4524	1/19/2017	P770279
LENCAK5187	1/24/2017	P770280
LENCAK5175	1/24/2017	P770281
LENCAK4546	1/25/2017	P770282
LENCAK5185	1/24/2017	P770283
LENCAK5162	2/8/2017	P770284
LENCAK5150	8/25/2017	P770285
LENCAK5144	3/31/2017	P770286
LENCAJ2787	1/31/2017	P770287
LENCAK4554	1/25/2017	P770288
LENCAK5186	1/31/2017	P770289
LENCAK5172	1/31/2017	P770290
LENCAK5170	1/31/2017	P770291
LENCAK5155	2/6/2017	P770292
LENCAK5164	2/7/2017	P770293
LENCAK5168	2/13/2017	P770294
LENCAK4514	2/14/2017	P770295
LENCAK5189	6/22/2017	P770296
LENCAK7184	2/16/2017	P770297
LENCAK5146	2/28/2017	P770298
LENCAK5151	2/27/2017	P770299
LENCAK5152	8/14/2017	P770300

LENCAK4527	2/20/2017	P770301
LENCAK5180	8/21/2017	P770302
LENCAJ4567	4/19/2017	P770303
LENCAK5148	3/5/2017	P770304
LENCAJ4590	2/25/2017	P770305
LENCAK4525	3/13/2017	P770306
LENCAK4551	4/25/2017	P770308
LENCAK5142	3/11/2017	P770311
LENCAK5143	2/28/2017	P770312
LENCAK4542	3/14/2017	P770313
LENCAK5181	3/8/2017	P770315
LENCAK7185	3/19/2017	P770316
LENCAK5161	3/21/2017	P770317
LENCAK4544	3/31/2017	P770333
LENCAJ4574	5/25/2017	P770348
LENCAK5183	7/3/2017	P770395
LENCAK4531	11/7/2016	SPARE
LENCAL3099	2/23/2017	SPARE
LENCAK5188	11/3/2017	SPARE
LENCAK5228	12/27/2017	SPARE
LENCAJ4582	12/27/2017	SPARE
LENCAL3091	2/1/2018	SPARE
LENCAK5237	2/5/2018	SPARE
LENCAK5227	2/5/2018	SPARE
LENCAL3092	2/5/2018	SPARE

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(h) 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 (i)(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.

(i) Related Information

(1) For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

(2) For service information identified in this AD, contact International Aero Engines (IAE), 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.* You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, MA, on June 22, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–13795 Filed 6–27–18; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0555; Product Identifier 2017–NM–152–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model 4101 airplanes. This proposed AD was prompted by a report of an improperly installed spacer around the electrical pins in the cartridge connector for the fire bottle extinguisher cartridge. This proposed AD would require repetitive inspections for excessive or missing spacers, and applicable corrective

actions. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 13, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0555; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3228.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0555; Product Identifier 2017–NM–152–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on 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 NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0212, dated October 25, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all BAE Systems (Operations) Limited Model 4101 airplanes. The MCAI states:

> During scheduled maintenance (fire bottle extinguisher cartridge resistance check) it was noted that on the extinguisher cartridge, the blue spacer around the electrical pins appeared to be located too far forward. It was discovered that, inadvertently, an additional spacer (possibly from a previous extinguisher cartridge) was located in the extinguisher cartridge connector. This effectively shortens the electrical pins in the cartridge connector, which could result in insufficient engagement with the associated sockets on the aeroplane connector. A missing spacer would not affect the electrical connection between the extinguisher cartridge and the aeroplane wiring, but could allow moisture ingress over time.
>
> Both conditions, if not detected and corrected, could prevent the fire extinguisher bottle from discharging when required, possibly resulting in damage to the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, BAE Systems (Operations) Ltd issued Service Bulletin (SB) J41–26–009, providing inspection instructions to ensure that a single blue spacer is fitted on the inside of the extinguisher cartridge connector.
>
> For the reason described above, this [EASA] AD requires a one-time [general visual] inspection [and inspection after a maintenance task that involves disconnection or re-connection of the electrical connector] of the extinguisher cartridge electrical connector and the aeroplane's electrical connector and, depending on findings, removal of excessive spacers or replacement of the fire extinguisher bottle.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0555.

Related Service Information Under 1 CFR Part 51

BAE Systems (Operations) Limited has issued Service Bulletin J41–26–009, dated November 23, 2016. This service information describes procedures for a general visual inspection of the cartridge electrical connector and the aircraft electrical connector for missing or excessive spacers, and corrective actions including removing excessive spacers or replacing the fire bottle extinguisher cartridge. 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 and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$340

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	Up to $1,734	Up to $1,819.

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 proposed 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 transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited: Docket No. FAA–2018–0555; Product Identifier 2017–NM–152–AD.

(a) Comments Due Date

We must receive comments by August 13, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BAE Systems (Operations) Limited Model 4101 airplanes, certificated in any category, all serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a report of an improperly installed spacer around the electrical pins in the cartridge connector for the fire bottle extinguisher cartridge. We are issuing this AD to detect and correct excessive or missing spacers, which could result in the fire extinguisher bottle not discharging when required, possibly resulting in damage to the airplane.

(f) Compliance

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

(g) Inspection

Within 12 months after the effective date of this AD, do a general visual inspection of the inside of the cartridge electrical connector and the inside of the airplane electrical connector in accordance with the Accomplishment Instructions of the BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(h) Inspections After Maintenance

As of the effective date of this AD, before further flight after each accomplishment of a maintenance task involving disconnection or (re-)connection of an electrical connector of a fire bottle extinguisher cartridge, do a general visual inspection of the inside of the cartridge electrical connector and the inside of the airplane electrical connector in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(i) Corrective Actions

(1) If, during any inspection as required by paragraph (g) or (h) of this AD, as applicable, more than one spacer is found inside the cartridge electrical connector: Before further flight, remove the excessive spacer(s) from the inside of the cartridge electrical connector in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(2) If, during any inspection as required by paragraph (g) or (h) of this AD, as applicable, one or more spacers are found inside the airplane electrical connector: Before further flight, remove all spacers from the inside of the airplane electrical connector in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(3) If, during any inspection as required by paragraph (g) or (h) of this AD, as applicable, no blue spacer is found inside the cartridge electrical connector body: Before further flight, replace the cartridge in accordance with the Accomplishment Instructions of the BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0212, dated October 25, 2017; for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0555.

(2) For more information about this AD, contact Todd Thompson, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3228.

(3) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on June 19, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–13782 Filed 6–27–18; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0060; FRL–9979–99—Region 10]

Air Plan Approval; Washington; Interstate Transport Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. On February 7, 2018, the State of Washington made a submission to the Environmental Protection Agency (EPA) to address these requirements. The EPA is proposing to approve the submission as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) in any other state.

DATES: Comments must be received on or before July 30, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2018–0060 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency, Region 10, 1200 Sixth Ave., Suite 155, Seattle, WA 98101; telephone number: (206) 553–0256; email address: *hunt.jeff@epa.gov.*

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

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I. What is the background of this SIP submission?

This rulemaking addresses a submission from the Washington Department of Ecology (Ecology) assessing interstate transport requirements for the 2012 annual $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises from section 110(a)(1) of the CAA. Pursuant to section 110(a)(1), states must submit within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof), a plan that provides for the implementation, maintenance, and enforcement of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address. The EPA commonly refers to such state plans as ''infrastructure SIPs.'' Specifically, this rulemaking addresses the requirements under CAA section 110(a)(2)(D)(i)(I), otherwise known as the ''good neighbor'' provision, which requires SIPs to contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state.

II. What guidance or information is the EPA using to evaluate this SIP submission?

The most recent relevant document was a memorandum published on March 17, 2016, titled ''Information on the Interstate Transport ''Good

Neighbor'' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' (memorandum). The memorandum describes the EPA's past approach to addressing interstate transport, and provides the EPA's general review of relevant modeling data and air quality projections as they relate to the 2012 annual $PM_{2.5}$ NAAQS. The memorandum provides information relevant to the EPA Regional office review of the CAA section 110(a)(2)(D)(i)(I) ''good neighbor'' provision in infrastructure SIPs with respect to the 2012 annual $PM_{2.5}$ NAAQS. This rulemaking considers information provided in that memorandum.

The memorandum also provides states and the EPA Regional offices with future year annual $PM_{2.5}$ design values for monitors in the United States based on quality assured and certified ambient monitoring data and air quality modeling. The memorandum describes how these projected potential design values can be used to help determine which monitors should be further evaluated to potentially address whether emissions from other states significantly contribute to nonattainment or interfere with maintenance of the 2012 annual $PM_{2.5}$ NAAQS at those sites. The memorandum explains that the pertinent year for evaluating air quality for purposes of addressing interstate transport for the 2012 $PM_{2.5}$ NAAQS is 2021, the attainment deadline for 2012 $PM_{2.5}$ NAAQS nonattainment areas classified as Moderate.

Based on this approach, the potential receptors are outlined in the memorandum. Most of the potential receptors are in California, located in the San Joaquin Valley or South Coast nonattainment areas. However, there is also one potential receptor in Shoshone County, Idaho, and one potential receptor in Allegheny County, Pennsylvania. The memorandum also indicates that for certain states with incomplete ambient monitoring data, additional information including the latest available data should be analyzed to determine whether there are potential downwind air quality problems that may be impacted by transported emissions.

This rulemaking considers analysis in Washington's submission, as well as additional analysis conducted by the EPA during review of its submission. For more information on how we conducted our analysis, please see the technical support document (TSD) included in the docket for this action.

III. The EPA's Review

This rulemaking proposes action on Washington's February 7, 2018, SIP submission addressing the good neighbor provision requirements of CAA section 110(a)(2)(D)(i)(I). State plans must address specific requirements of the good neighbor provisions (commonly referred to as ''prongs''), including:

—Prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong one); and

—Prohibiting any source or other type of emissions activity in one state from interfering with maintenance of the NAAQS in another state (prong two).

The EPA has developed a consistent framework for addressing the prong one and two interstate transport requirements with respect to the $PM_{2.5}$ NAAQS in several previous federal rulemakings. The four basic steps of that framework include: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the relevant NAAQS; (2) identifying which upwind states contribute to these identified problems in amounts sufficient to warrant further review and analysis; (3) for states identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind state from significantly contributing to nonattainment or interfering with maintenance of the relevant NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was applied with respect to $PM_{2.5}$ in the Cross-State Air Pollution Rule (CSAPR), designed to address both the 1997 and 2006 $PM_{2.5}$ standards, as well as the 1997 ozone standard.[1]

In its submission, Ecology generally mirrored the framework established by the EPA. Specifically: (1) Ecology reviewed past and current air quality nationwide to identify potential downwind receptors that may have problems attaining or maintaining the 2012 $PM_{2.5}$ NAAQS; (2) Ecology identified those western receptors from the broader nationwide list that may be impacted by Washington for further review and analysis; (3) Ecology then reviewed air quality reports, modeling results, designation letters, designation technical support documents, and available attainment plans to determine if emissions from Washington may impact these specific areas; (4) Lastly, Ecology conducted its own independent Hybrid Single Particle Lagrangian Integrated Trajectory (HYSPLIT) back trajectory modeling for Shoshone County, Idaho to support the state's conclusion that sources in Washington are not significantly contributing to this receptor, or interfering with maintenance of this receptor. From this analysis, Ecology concluded that Washington does not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

As discussed in the TSD for this action, we came to the same conclusion as the state. In our evaluation, potential downwind nonattainment and maintenance receptors were identified in other states. The EPA evaluated these potential receptors to determine first if, based on review of relevant data and other information, there would be downwind nonattainment or maintenance problems, and if so, whether Washington contributes to such problems in these areas. After reviewing air quality reports, modeling results, designation letters, designation technical support documents, attainment plans and other information for these areas, we find there is no contribution sufficient to warrant additional SIP measures. Therefore, we are proposing to approve the Washington SIP as meeting CAA section 110(a)(2)(i)(I) interstate transport requirements for the 2012 $PM_{2.5}$ NAAQS.

IV. What action is the EPA taking?

The EPA is proposing to approve Ecology's February 7, 2018, submission certifying that the Washington SIP is sufficient to meet the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I), specifically prongs one and two, as set forth above. The EPA is requesting comments on the proposed approval.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the

[1] Washington was not part of the CSAPR rulemaking. The EPA approved the Washington SIP as meeting the CAA section 110(a)(2)(D)(i)(I) requirements for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS on January 13, 2009 (74 FR 1591) and the 2006 $PM_{2.5}$ NAAQS on July 30, 2015 (80 FR 45429).

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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 14, 2018.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2018–13861 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0035; FXES11130900000C2–189–FF09E42000]

RIN 1018–BB98

Endangered and Threatened Wildlife and Plants; Proposed Replacement of the Regulations for the Nonessential Experimental Population of Red Wolves in Northeastern North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of a draft environmental assessment, opening of comment period, and announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to replace the existing regulations governing the nonessential experimental population designation of the red wolf (*Canis rufus*) under section 10(j) of the Endangered Species Act, as amended. We request public comments, and announce a public information session and public hearing, on this proposed rule. In addition, we announce the availability of a draft environmental assessment on the proposed replacement of the existing nonessential experimental population regulations for the red wolf. In conjunction with this proposed action, we are initiating consultation pursuant to section 7 of the Endangered Species Act and completing a compatibility determination pursuant to the National Wildlife Refuge System Improvement Act of 1997.

We propose this action to ensure our regulations are based on the most recent science and lessons learned related to the management of red wolves. If adopted as proposed, this action would further conservation of red wolf recovery overall by allowing for the reallocation of resources to enhance support for the captive population, retention of a propagation population for future new reintroduction efforts that is influenced by natural selection, and provision of a population for continued scientific research on wild red wolf behavior and population management. This action would also promote the viability of the nonessential experimental population by authorizing proven management techniques, such as the release of animals from the captive population into the nonessential experimental population, which is vital to maintaining a genetically healthy population.

DATES:

Written comments: We will consider comments we receive on or before July 30, 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.

Requests for additional public hearings: We must receive requests for additional public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by July 12, 2018.

Public information session and public hearing: On July 10, 2018, we will hold a public information session and public hearing on this proposed rule and draft environmental assessment. The public information session is scheduled from 5:30 p.m. to 6:30 p.m., and the public hearing from 7 p.m. to 9 p.m.

ADDRESSES:

Availability of documents: This proposed rule is available on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2018–0035 and on our website at *http://www.fws.gov/Raleigh.* Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, are also available for public inspection at *http://www.regulations.gov.* All comments, materials, and documentation that we considered in this document are available for public inspection, by appointment, during normal business hours, at the Raleigh Ecological Services Field Office, U.S. Fish and Wildlife Service, 551F Pylon Drive, Raleigh, NC 27606; telephone 919–856–4520; or facsimile 919–856–4556. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339.

Comment submission: You may submit written comments on this proposed rule and draft environmental assessment by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2018–0035, 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, check the Proposed Rules box 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–R4–ES–2018–0035, 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 *Public Comments,* below, for more information).

Public information session and public hearing: The public information session and public hearing will occur at Roanoke Festival Park, One Festival Park, Manteo, NC 27954.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office, 551F Pylon Drive, Raleigh, NC 27606; telephone 919–856–4520; or facsimile 919–856–4556. Persons who use a TDD may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This Proposal

We are proposing to replace the regulations governing the northeast North Carolina nonessential experimental population (NC NEP) of the red wolf, codified in 1995 in title 50 of the Code of Federal Regulations (CFR) at § 17.84(c) (50 CFR 17.84(c)). The purpose of the proposed action is to incorporate the most recent science and lessons learned related to the management of red wolves to implement revised regulations that will better further the conservation of the red wolf. We propose to establish a more manageable wild propagation population that will allow for more resources to support the captive population component of the red wolf program (which is the genetic fail safe for the species); serve the future needs of new reintroduction efforts; retain the influences of natural selection on the species; eliminate the regulatory burden on private landowners; and provide a population for continued scientific research on wild red wolf behavior and population management.

Why We Need To Publish a Rule

Significant changes to the red wolf population and red wolf management in the NC NEP have occurred since 1995; since then, management of red wolf and coyote interactions has become a primary management consideration. The current regulations associated with the NC NEP are no longer effective in addressing the current and future management needs of the red wolf and preclude the development of sound management strategies for this species.

Replacing the existing regulations is necessary to respond to the changing landscape and better ensure the conservation and recovery of the red wolf. Success of the red wolf recovery program under the existing regulations has been limited, and the current regulations lack the necessary flexibility to respond to the red wolf's conservation needs. Most specifically, it is apparent that the current regulations are not effective in terms of fostering coexistence between people and red wolves, and that changes are needed to reduce conflict associated with red wolf conservation.

The Basis for the Action

The 1982 amendments to the Endangered Species Act of 1973, as amended (Act), included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations in 50 CFR part 17, subpart H (Experimental Populations), the Service may designate an experimental population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as threatened regardless of the species' designation elsewhere in its range. Section 4(d) of the Act allows us to adopt any regulations that we deem necessary and advisable to provide for the conservation of a threatened species. Treating the experimental population as threatened allows us the discretion of devising special regulations and management to ensure the population supports conservation and recovery of the species.

We have prepared a draft environmental assessment (DEA) pursuant to the National Environmental Policy Act (NEPA). On May 23, 2017, we published an advance notice of proposed rulemaking and notice of intent to prepare a NEPA document (82 FR 23518). This initiated a public scoping process that included a request for written comments and two public scoping meetings in June 2017. We have incorporated information collected since that scoping process began in the development of a DEA and this proposed rule. We will use information from this analysis to inform our final decision.

Public Comment Procedures

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 State agencies, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments regarding:

(a) Contribution of the NC NEP to recovery goals for the red wolf;

(b) The relative effects that management of the NC NEP under the proposed rule would have on the conservation of the species;

(c) The extent to which the NC NEP may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the proposed NC NEP management area;

(d) Appropriate provisions for protections and ''take'' of red wolves;

(e) Ideas and strategies for promoting tolerance of red wolves on private property outside the NC NEP management area; and

(f) Appropriate means to evaluate the effectiveness of the proposed action, including relevant performance measures.

Additionally, we seek comments on the identification of direct, indirect, beneficial, and adverse effects that may result from this proposed 10(j) rule for red wolves. You may wish to consider the extent to which the proposed rule will affect the following when providing comments:

(a) Impacts on floodplains, wetlands, wild and scenic rivers, or ecologically sensitive areas;

(b) Impacts on Federal, State, local or Tribal park lands; refuges and natural areas; and cultural or historic resources;

(c) Impacts on human health and safety;

(d) Impacts on air, soil, and water;

(e) Impacts on prime agricultural lands;

(f) Impacts to other species of wildlife, including other endangered or threatened species;

(g) Disproportionately high and adverse impacts on minority and low income populations;

(h) Any socioeconomic or other potential effects; and

(i) Any potential conflicts with other Federal, State, local, or Tribal environmental laws or requirements.

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.

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, Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Information Session and Public Hearing

On July 10, 2018, we will hold a public information session and public hearing on this proposed rule and draft environmental assessment. The times and location of the public information session and public hearing are provided under **DATES** and **ADDRESSES**, above.

We are holding the public hearing to provide interested parties an opportunity to present verbal testimony (formal, oral comments) or written comments regarding this proposed rule and the associated DEA. A formal public hearing is not, however, an opportunity for dialogue with the Service; it is only a forum for accepting formal verbal testimony.

In contrast to the public hearing, the information session will allow the public the opportunity to interact with Service staff, who will be available to provide information and address questions on this proposed rule and the DEA. We cannot accept verbal testimony at the information session; verbal testimony can only be accepted at the public hearing.

Anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a written copy of their statement to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up at the hearing if they desire to make an oral statement. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

Persons needing reasonable accommodations to participate in the information session or public hearing should contact the person listed above under **FOR FURTHER INFORMATION CONTACT**. Reasonable accommodation requests should be received no later than July 5, 2018, to help ensure availability; American Sign Language or English as a second language interpreter needs should be received no later than June 29, 2018.

Background

Biological Information

A species status assessment (SSA) report was prepared for the red wolf (USFWS 2018). The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the red wolf. The SSA report underwent independent peer review by scientists with expertise in wolf biology, habitat management, and stressors (factors negatively affecting the species) to the species. The SSA report can be found on the Southeast Region website at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0035.

Why We Need To Replace the Regulations

On April 13, 1995, we published a final rule (60 FR 18940) amending the regulations at 50 CFR 17.84(c) for the nonessential experimental populations of red wolves in North Carolina and Tennessee. We refer to that final rule as the ''1995 final rule.''

Under the provisions of the 1995 final rule, the NC NEP is declining more rapidly than the worst-case scenarios described in the most recent population viability analysis (Faust et al. 2016). As described in the Red Wolf Recovery Team Report (2016), there is consensus that the current direction and management of the NC NEP is unacceptable to the Service and stakeholders. Based on the SSA review, there are significant threats to the NC NEP and conditions for recovery of the species are not favorable, indicating a self-sustainable population may not be possible. Significant changes to management actions in the NC NEP recovery area have occurred since the 1995 final rule, which was promulgated before management of red wolf and coyote interactions became a primary management consideration. The current rule associated with the NC NEP is no longer effective in addressing the current and future management needs of the red wolf recovery program, and the regulations need to be revised to allow for the development of sound management strategies for this species.

The current regulations at 50 CFR 17.84(c) lack the needed flexibility to adapt to the arrival and proliferation of coyotes in eastern North Carolina. For example, the current regulations do not explicitly incorporate Red Wolf Adaptive Management Work Plan (RWAMWP) activities (discussed further below). Since issuance of the 1995 final rule, the coyote population has continued to expand in eastern North Carolina, thus significantly increasing the risk of hybridization between red wolves and coyotes. The risk of hybridization is exacerbated by the fact that there is a high degree of anthropogenic mortality (*e.g.,* gunshot, poisoning) in the NC NEP that presents additional challenges. Human-caused mortality, particularly during red wolf breeding season, significantly increases breeding pair disbandment, facilitating hybridization with coyotes. Furthermore, red wolf habitat in the NC NEP recovery area is discontinuous, further increasing the risk for hybridization. Additionally, sea level rise will be additive year after year and will impact the long-term viability of the current NC NEP. Based on these conditions, the Service must adapt its management to better conserve the red wolf.

The red wolf remains a conservation reliant species (*i.e.,* cannot be recovered without intense human management). Due to the spread of coyotes across the entire historical range of the red wolf, there are no coyote-free habitats where a reintroduction program could be successful without active coyote management. Furthermore, while the red wolf's genetic viability can be managed through the captive population, there is little chance of a naturally occurring wild population existing without active management for the foreseeable future, although the intensity of active management can vary with potential management scenarios and time. The RWAMWP proved successful in limiting coyote introgression and maintaining red wolf territories, but it was not designed to address other factors affecting the conservation of the species, such as anthropogenic mortality (Hinton et al. 2017). We anticipate the RWAMWP strategy will remain necessary for the NC NEP and any future NEPs.

We also believe it is apparent that the current regulations are not effective in

terms of fostering coexistence between people and red wolves, and that changes are needed to reduce conflict associated with red wolf conservation and allow for effective management of coyotes. As discussed by Henry and Lucash (2000), without private landowner support, we will not be able to recover the red wolf. Due to the importance of private landowners' support to red wolf conservation (over 90 percent of lands in the Southeast are privately owned), socio-political factors are as important, if not more important, than ecological factors. Fundamental change is needed in the way stakeholders are engaged in management of wild red wolf populations. State agencies, non-governmental organizations (NGO) and the Service will need to engage with the public and develop strategies for managing coyotes.

Recovery of the red wolf has conflicted with private landowners' ability to manage coyote populations. This has led to excessive losses of red wolves to anthropogenic mortality and disruption of established packs of red wolves and breeding pairs, allowing for the further expansion of coyote populations and increasing risk of red wolf/coyote hybridization. Coyote management was not a factor in 1986, when the NC NEP was first established, because coyotes were not present in the five-county NC NEP recovery area (Beaufort, Dare, Hyde, Tyrrell and Washington). Coyotes began to appear in the recovery area in the early 1990s, and they were well established in the area by 2000. This led to increased interest on the part of landowners to control coyotes and pursue them for recreational hunting and trapping. This brought regulation of coyotes by the North Carolina Wildlife Resources Commission (NCWRC) into increasing conflict with Service efforts to manage red wolves.

The Service and the NCWRC entered into an agreement in 2013, in order to improve coordination and collaboration regarding canid management and conservation on the Albemarle Peninsula. This agreement focused on improving collaboration between the agencies in areas of canid management, research, outreach, regulation, and enforcement. In 2013, a number of groups filed suit challenging the NCWRC's decision to authorize night hunting of coyotes in the red wolf recovery area, claiming that it would lead to unauthorized take of red wolves. The lawsuit was subsequently amended to include all coyote hunting in the red wolf recovery area. On May 14, 2014, the Court issued a preliminary injunction that prohibited all hunting of coyote (day or night) in the five-county NC NEP recovery area. Under the terms of a subsequent settlement agreement among the plaintiffs and the NCWRC, the NCWRC was able to reinstitute coyote hunting in the recovery area; however, hunting is allowed by permit only, all harvest must be reported to the NCWRC, and night hunting is prohibited. In January 2015, the NCWRC approved a set of resolutions requesting that the Service declare the red wolf extinct in the wild, terminate red wolf recovery efforts in North Carolina, and remove all red wolves from the wild.

Current regulations are not effective in terms of fostering coexistence between people and red wolves, and changes are needed to reduce conflict associated with red wolf conservation. Additionally, the current regulations limit the number of red wolves that can be released on the landscape. The release of up to 12 wolves was explicitly authorized in the 1986 regulations (51 FR 41790; November 19, 1986). No additional releases were authorized during subsequent rule revisions in 1991 (56 FR 56325; November 4, 1991) and 1995 (60 FR 18940; April 13, 1995). Movement of wolves between the captive and wild populations is needed to maintain the genetic integrity of the NC NEP and the overall red wolf population.

In summary, the existing regulations lack the flexibility necessary to ensure the conservation and recovery of the red wolf. The Service is proposing replacement regulations that will allow active coyote management and better ensure active participation by landowners and the State and local officials in canid management, thereby increasing the probability of persistence of the wild population of red wolves. These wild red wolves would be the main source of animals for future establishment of new experimental populations elsewhere within the historical range of the species.

Proposed Replacement Regulations for the NC NEP

Our intent with this proposed rule is to establish a fundamentally different paradigm for red wolf conservation. The rule itself would ensure protection and effective management of red wolves within the Federal lands of the Alligator River National Wildlife Refuge (NWR) and the Dare County Bombing Range (NC NEP management area).

This rule proposes to establish a NC NEP management area to include the Alligator River NWR and the Dare County Bombing Range (NC NEP management area). A small group (*i.e.,* one or two packs likely consisting of fewer than 15 animals) of red wolves would be maintained in the NC NEP management area. The wolves in this NC NEP management area would be actively managed under the RWAMWP.

The primary role of this population relative to the conservation of the species would be to provide a source of red wolves that are raised in, and adapted to, natural conditions for the purpose of facilitating future reintroductions.

It is anticipated that some red wolves would leave the NC NEP management area on a fairly regular basis. Although these red wolves would be considered part of the NC NEP, the proposed regulations would contain no take prohibitions of these animals on private lands and non-Federal public lands. As such, the Service has determined that no take prohibitions will apply outside the NC NEP management area. The proposed rule would require only that the Service be notified within 24 hours regarding the take of any collared animals and that the collars be returned to the Service.

A species status assessment (SSA) report was prepared for the red wolf (USFWS 2018) that contains additional information regarding the biology and status of the species. The SSA report can be found on the Southeast Region website at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0035.

Focusing management on Federal lands while removing the cumbersome procedural provisions for take of red wolves should reduce overall program costs and facilitate the State and other partners to take a more active leadership role in canid management and conservation on non-Federal lands. Limiting the designated NC NEP management area to Federal lands should also reduce conflicts between the State, the Service and any other stakeholders regarding authorized management of coyotes on private lands.

Despite the challenges and limitations facing the NC NEP, managing a smaller wild population is important to fostering the species in the wild. This management approach will allow more resources to support the captive population and ability to establish other wild populations. It will also help retain some of the influences of natural selection, serve as a small propagation population for future new reintroduction efforts, and could provide a population for continued scientific research on wild behavior. Research would be authorized and encouraged and could be targeted at

filling key knowledge gaps to inform future reintroduction efforts at other sites, specifically focused on better understanding the behavioral and ecological factors that reproductively separate red wolves and coyotes with a view toward developing more efficient and sustainable management techniques. This research would focus on predator-prey dynamics, maintenance of genetic integrity, and management of hybridization. Public education and outreach activities would continue.

Statutory and Regulatory Framework

The 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Before section 10(j) created the ''experimental'' designation, ''[l]ocal opposition to reintroduction efforts, . . . stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of [reintroductions] as a management tool'' (51 FR 41790; November 19, 1986). The provisions of section 10(j) were enacted to ameliorate concerns that reintroduced populations will negatively impact landowners and other private parties by giving the Secretary of the Interior greater regulatory flexibility and discretion in managing the reintroduction of listed species to encourage recovery in collaboration with partners, especially private landowners. Congress specifically contemplated that the release of experimental populations of predators, such as red wolves, could allow for the directed taking of these animals if the release were frustrated by public opposition. Also, Congress noted that permits for takings of experimental populations would not be necessary if such populations were treated as threatened, thus indicating take would not be prohibited. See H.R. Rep 97–567 (1982).

Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate an endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed) as an experimental population.

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. Conservation is defined by the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. In short, experimental populations must further a species' recovery. In making such a finding, the Service uses the best scientific and commercial data available to consider: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the relative effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

Furthermore, as set forth at 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State game and fish agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population. Based on the best available information, we must determine whether the experimental population is essential or nonessential to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild.

Under this NEP designation, all members of the population are treated as if they were listed as a threatened species for the purposes of establishing protective regulations, regardless of the species' designation elsewhere in its range. This approach allows us to develop tailored conservation measures that we deem necessary and advisable to provide for the conservation of the species. In these situations, the general regulations at 50 CFR 17.31 do not apply. The protective regulations adopted for an experimental population in a section 10(j) rule contain the applicable prohibitions and exceptions for that specific population. We find it necessary and advisable to apply section 9 prohibitions for endangered species and section 10 exceptions within the NC NEP management area.

Section 7(a)(2) of the Act requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an endangered or threatened species or adversely modify its critical habitat. For the purposes of section 7(a)(2), we treat an NEP as a threatened species only when the NEP is located within a National Wildlife Refuge or unit of the National Park Service. Under the proposed rule, this means intra-agency consultation would be required for activities on the Alligator River NWR.

When members of an NEP are located outside a National Wildlife Refuge or National Park Service unit (in this case, on Dare County Bombing Range), then, for the purposes of section 7, they are treated as species proposed for listing, not as threatened species. This means section 7(a)(2) of the Act does not apply. Instead, section 7(a)(4) applies. This provides the Service with additional flexibility because under section 7(a)(4), Federal agencies are only required to confer (rather than consult) with the

Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. Section 7(a)(4) conference recommendations are non-binding and optional to the agencies carrying out, funding, or authorizing the action at issue. Therefore, section 7(a)(2) consultation would not be required for actions that occur outside of Alligator River NWR (*i.e.,* on Dare County Bombing Range).

Previous Federal Actions

The red wolf was originally listed as a species threatened with extinction under the Endangered Species Preservation Act of 1966 (32 FR 4001; March 11, 1967). This species is currently listed as an endangered species under the Act. The demise of the red wolf was directly related to human activities, such as predator control efforts at the private, State, and Federal levels and conversion of prime habitat to other purposes.

Historically, the red wolf range included Texas and Louisiana to the Ohio River Valley and up the Atlantic Coast into northern Pennsylvania or southern New York, and perhaps farther north (Wildlife Management Institute (WMI) 2014; for reference, see *http://www.regulations.gov,* Docket No. FWS–R4–ES–2017–0006). However, by the mid-1970s, the only remaining population occurred in southeastern Texas and southwestern Louisiana (WMI 2014). In 1975, it became apparent that the only way to save the red wolf from extinction was to capture as many wild animals as possible and place them in a secured captive-breeding program. This decision was based on the critically low numbers of animals left in the wild, poor physical condition of those animals due to disease and internal and external parasites, the threat posed by an expanding coyote (*Canis latrans*) population, and consequent hybridization.

The Service removed the remaining red wolves from the wild and used them to establish a breeding program with the objective of restoring the species to a portion of its former range. Ultimately, 14 animals formed the basis of the Red Wolf Captive Breeding Program with the Point Defiance Zoo and Aquarium in Tacoma, Washington. By 1986, the captive-breeding program held 80 red wolves in seven facilities and public and private zoos across the United States. With the red wolf having been extirpated from its entire historical range, the Service took action to reestablish a wild population.

In 1986, the Service published a final rule in the **Federal Register** (51 FR 41790; November 19, 1986) to reintroduce red wolves into Alligator River NWR, Dare County, North Carolina. Alligator River NWR was chosen due to the absence of coyotes, lack of major livestock operations, and availability of prey species. The red wolf population in Dare County (Alligator River NWR) and adjacent Tyrrell, Hyde, and Washington Counties was determined to be a nonessential experimental population (NEP) under section 10(j) of the Act (a ''10(j) rule'').

In 1991, the Service published a final rule (56 FR 56325; November 4, 1991) that added Beaufort County to the counties where the 1986 NEP designation would apply and provided for introduction of a second NEP of red wolves in the Great Smoky Mountains National Park (Park), Haywood and Swayne Counties, North Carolina, and Blount, Cocke, and Sevier Counties in Tennessee. The second NEP's efforts were discontinued in 1998 (63 FR 54151, October 8, 1998; USFWS 2007) due to lack of resources in the area, poor pup survival, and the dispersal patterns of red wolves released onsite. The surviving animals from the Park were placed in captivity or transferred to the NC NEP.

From 1987 through 1992, recovery officials released 42 red wolves to establish the NC NEP. In 1993, the experimental population was expanded with reintroductions at Pocosin Lakes NWR in North Carolina. The 10(j) rule was modified again in 1995 (60 FR 18940; April 13, 1995) to revise and clarify the incidental take provision; revise the livestock owner take provision; add harassment and take provisions for red wolves on private property; revise and clarify the vaccination and recapture provision; and apply the same taking (including harassment) provisions to red wolves outside the experimental population area, except for reporting requirements. Today, the only population of red wolves in the wild is the NC NEP established in the five counties of the Albemarle peninsula (see map in supporting documents at *http://www.regulations.gov,* Docket No. FWS–R4–ES–2018–0035). All other individuals of this species are found in captive facilities around the country. The NC NEP has been closely monitored and managed since the first introductions in 1986.

Management of red wolves in the NC NEP has changed over the years in response to our expanding knowledge of red wolf behavior and ecology and changing conditions within the NC NEP recovery area. The 1986 10(j) rule anticipated that red wolves would stay within the bounds of Alligator River NWR and the Dare County Bombing Range. Red wolves leaving this area were to be captured and returned to the NWR or placed in captivity. We quickly learned the shortcomings of this approach, as red wolves left the NWR within a few months of the initial releases. Some red wolves were captured and returned. In other cases, the Service entered into agreements with landowners to authorize the management of red wolves on private lands. In 1995, we amended the 10(j) rule to revise and clarify the incidental take provision, revise the livestock owner take provision, add harassment and take provisions for red wolves on private property, and apply the same taking (including harassment) provisions to red wolves outside the experimental population area (NC NEP recovery area) (60 FR 18940; April 13, 1995). In the early 1990s, expansion of coyotes into the NC NEP recovery area resulted in interbreeding and coyote gene introgression into the red wolf population. In 1999, to reduce interbreeding between red wolves and coyotes, the Service developed the RWAMWP, which utilized sterilized coyotes as territorial ''placeholders.'' Placeholders, which could not produce offspring should they mate, were expected to hold territory, thereby excluding other coyotes. Placeholders would eventually be replaced on the landscape either through competition with red wolves or through management actions. Throughout the history of the program, red wolves (and since 2000), placeholders have been monitored via telemetry, vaccinated against diseases prevalent in canids, and intensively studied in conjunction with a number of field research projects.

As provided in the current regulations at 50 CFR 17.84(c), our staff has implemented management actions involving direct take of red wolves. This has included recapture of red wolves to: Replace telemetry collars; provide routine veterinary care; move red wolves from place to place to establish breeding pairs or to address management issues; and to remove animals from the wild population that were a threat to human safety or property, or that were severely injured or diseased. Also, as provided for in the current regulations, animals have been captured when private landowners requested their removal, and lethal take authorizations have been issued pursuant to 50 CFR 17.84(c)(4)(v).

In 2013, the Service initiated a formal review of the NC NEP due to concerns regarding its effectiveness and high costs. The Service contracted with the

Wildlife Management Institute (WMI) to conduct a review. The WMI review (WMI 2014) found multiple areas of concern related to NC NEP management and regional oversight; interpretation of the 10(j) rule; program costs and efficacy; the relationship of the NEP to other aspects of red wolf recovery; and landowner, community, and State support. Based on the findings of the WMI review (WMI 2014), the Service decided to suspend those management activities not explicitly authorized in the 1995 final rule and related compliance documents (*e.g.,* section 7 consultation under the Act, NEPA), including release of additional red wolves from the captive population into the NC NEP recovery area and deployment of placeholder coyotes. Additionally, a Department of the Interior Office of the Inspector General (OIG) Report found that the Red Wolf Recovery Program released more wolves than it originally proposed and acted contrary to its rules by releasing wolves on to private lands (OIG 2016).

Findings

As discussed under *Statutory and Regulatory Framework,* several findings are required before establishing an experimental population. Below are our findings.

Is the experimental population wholly separate geographically from non-experimental populations of the same species?

Yes. The red wolf was considered extinct in the wild by 1980 (USFWS 1990). As such, red wolves of the NC NEP will be wholly separate from any non-experimental population and will have no effect on any extant wild population of red wolves.

Most red wolves in existence today are held in captivity as part of the Red Wolf Species Survival Plan (SSP). Currently, there are approximately 221 red wolves at over 43 facilities across the country that support the captive population. Among others, two of the main goals of the Red Wolf SSP are to maintain 80 to 85 percent of the genetic diversity found in the original founder stock diversity for a period of 150 plus years, and to achieve a captive population size of 330 animals (USFWS 1990). There are currently 24 known (*e.g.,* radio-collared) red wolves in the wild within the five-county NC NEP with an estimated total population in the wild of approximately 30 to 35 individuals.

Is the experimental population area in suitable natural habitat outside the species' current range, but within its probable historical range?

Yes. In North Carolina, reintroduced wolves have used many habitats, including agricultural lands, pine forests, and pocosins (*e.g.,* a wetland found in coastal areas with sandy peat soil and shrubs throughout; Kelly et al. 2004, Trani and Chapman 2007). The WMI (2016) conducted a review of all available information related to the historical range of the red wolf. It concluded that previous range maps developed and used by the Service for the Red Wolf Recovery Program were too restrictive. An accurate predictor of the historical red wolf range includes all or parts of several Level II ecoregions including the Mississippi Alluvial and Southeast United States Coastal Plains, Ozark/Ouachita Appalachian Forests, South Central Semi-Arid Prairies, Southeastern United States Plains, and the Texas-Louisiana Coastal Plains. This area encompasses the southeastern United States, from southern Texas northeastward through eastern Oklahoma, southern and central Missouri into Illinois and southern Iowa; then east across southern Indiana and Ohio, and across Pennsylvania and New Jersey to the New York Bight; then south to the tip of the Florida Peninsula. Therefore, the NC NEP is within the probable historical range.

The fact that red wolves have existed on the Albemarle Peninsula since 1986, and have successfully established packs and territories (especially within the Alligator River NWR), survived, and reproduced, indicates that the habitat is suitable. Despite anticipated future habitat changes related to sea level rise, we expect the habitat to remain suitable for the foreseeable future. Therefore, the NC NEP is within suitable habitat for the red wolf.

Is the experimental population essential to the continued existence of the species?

Before authorizing the release of any experimental population outside the current range of the species, the Act instructs us to determine whether an experimental population is essential to the continued existence of an endangered or threatened species. Our regulations define essential experimental populations as those ''whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild'' (50 CFR 17.80(b)). The Service defines ''survival'' as the condition in which a species continues to exist in the future while retaining the potential for recovery (USFWS and National Marine Fisheries Service 1998). Inherent in our regulatory definition of essential is the impact the potential loss of the experimental population would have on the species as a whole (USFWS 1984). All experimental populations not meeting this bar are considered nonessential (50 CFR 17.80(b)).

The Service previously determined that this experimental population of red wolves was nonessential in the 1986 final rule because even if the entire experimental population was lost, it would not appreciably reduce the prospects for future survival of the species because red wolves are still maintained in the captive-breeding program and we have proven capacity to successfully start a wild population from captive stock. As these circumstances have not changed, the NC NEP remains a nonessential population as it was established in 1986, and remained through subsequent amendments to the regulations. It is instructive that Congress did not put requirements in section 10(j) of the Act to reevaluate the determination of essentiality after a species has been reestablished in the wild. While our regulations require a ''periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species'' (50 CFR 17.81(c)(4)), this has not been interpreted as requiring reevaluation and reconsideration of a population's essentiality status (USFWS 1991; USFWS 1994; USFWS 1996). Recently a ruling in a case in the U.S. District Court for the District of Arizona (*Center for Biological Diversity* v. *Jewell,* 2018 WL 1586651 (D. Ariz. March 31, 2018)) found that the Service should have revisited the essentiality determination for the experimental population of the Mexican gray wolf (*Canis lupus baileyi*) when revising the 10(j) rules governing that population. An important difference between the revision of the Mexican gray wolf 10(j) rule revision and this proposed rule is that the revision of the Mexican gray wolf 10(j) rule expanded the area covered by the experimental population designation into areas not previously included; whereas this proposed rule for the red wolf does not. All of the considered alternatives either sustain, reduce, or terminate the existing NEP rather than expanding it into new areas outside the species' current range.

Does the establishment of the experimental population and release into the NC NEP further the conservation of the species?

Yes.

(1) Are there any possible adverse effects on existing populations of the red wolf as a result of removal of individuals for introduction elsewhere?

As stated above, the only other known red wolves in existence are held in captivity as part of the captive population. While one of the primary functions of the captive population is to provide animals for reintroduction to the wild, such reintroductions could adversely affect the captive population by reducing its size and genetic diversity. The Red Wolf Population Viability Analysis (Faust et al. 2016) indicates that the captive population at its current size can support the releases from the captive population into the NC NEP without adversely affecting the captive population, but this capacity is limited and releases above this level (such as those that may be needed to establish additional NEP sites) may adversely affect the captive population. The Service is currently working with our SSP partners and others to expand the captive population in order to better conserve genetic diversity and support additional reintroduction efforts.

(2) What is the likelihood that any such experimental population will become established and survive in the foreseeable future?

Between the initial designation of the nonessential experimental population in North Carolina in 1986 and 1995, the reintroduction experiment was successful and generated benefits that extended beyond the immediate conservation of red wolves (60 FR 18940; April 13, 1995). However, by approximately 2005, the red wolf population within the five-county NC NEP had leveled off and begun to decline. It was also during this time (the mid-1990s through early 2000s) that a change occurred that fundamentally altered the dynamics of the NC NEP and red wolf conservation generally: The arrival of coyotes on the Albemarle Peninsula and the impacts of that arrival on human tolerance of red wolves.

By the early to mid-1990s, coyotes had become established on the Albemarle Peninsula and had begun to breed with red wolves (Kelly et al. 1999; Phillips et al. 2003). As noted above, the fact that red wolves and coyotes can and do interbreed when mature was a key factor that threatened the red wolf with extinction in southeastern Texas and southwestern Louisiana in the mid-1970s. One of the factors that led to the selection of the Alligator River NWR as the first reintroduction site in 1987 was that the range of the coyote had not yet expanded to include eastern North Carolina. The arrival of coyotes in the five-county NC NEP renewed the threat that the red wolf genome would be subsumed into the coyote genome through genetic introgression.

In 1999, a workshop was convened that brought together over 40 red wolf experts (Kelly et al. 1999). At this workshop, information was presented indicating that genetic introgression with coyotes could result in the loss of a unique red wolf genome within a few generations. Recognizing the urgency of the threat posed by coyotes, the workshop participants developed the RWAMWP (Kelly et al. 1999).

The RWAMWP divided the Albemarle Peninsula into management zones with different objectives for red wolf and coyote management within each. The zones were designed to prioritize management activities with the objective of maintaining a gradient from east to west across the Albemarle Peninsula; with the eastern end of the peninsula populated almost exclusively with red wolves (Zone 1), the western end populated with coyotes (Zone 3), and a zone in the middle (Zone 2) where coyote-red wolf interactions would be closely monitored and adaptively managed (USFWS 2013; for reference, see *http://www.regulations.gov,* Docket No. FWS–R4–ES–2018–0035).

One of the challenges in implementing the RWAMWP was the need for reliable methods to quickly distinguish between red wolves, hybrids, and coyotes, as adult hybrids can vary greatly in appearance from nearly wolf-like to nearly coyote-like, and puppies are essentially indistinguishable. Miller et al. (2003) were able to develop a reliable test based on blood samples. The RWAMWP also depended on the development of an effective means of managing intraspecific matings. The Service's experience in Texas and Louisiana had demonstrated that efforts focused on eradicating coyotes from the area were ineffective. The RWAMWP pioneered the use of sterile placeholders to manage space and red wolf-coyote interactions (Seidler and Gese 2012; Gese and Terletzky 2015). Implementation of these management practices also required the continued cooperation of private landowners to gain access to the animals and dens off Federal lands (Kelly et al. 1999).

By implementing the intense management described in the RWAMWP and constant releases from captivity (*e.g.,* pup fostering), genetic introgression from the growing coyote population into the red wolf population was reduced (Bohling et al. 2016). The RWAMWP appeared in 2015 to be effectively limiting genetic introgression (less than 4 percent coyote ancestry from introgression since the reintroduction began) into the red wolf population, although hybridization is seen as an ongoing challenge (Gese et al. 2015; USFWS 2018). With this intense management strategy and continued strategic releases of red wolves from the SSP, the red wolf population continued to increase and by 2005, reached a peak population of approximately 130 and 150 animals and over 20 breeding pairs (USFWS 2007; Hinton et al. 2016).

The RWAMWP effectively addressed the immediate threat to red wolves posed by the arrival of the coyote, namely genetic introgression (Bohling et al. 2016). It did not address the indirect threat posed by the arrival of the coyote (loss of red wolves associated with coyote control activities), and this threat would not begin to manifest itself until approximately 2005. As coyotes expanded their range and numbers throughout North Carolina and the eastern United States, citizens (including landowners and land managers on the Albemarle Peninsula) became increasingly concerned about the growing coyote population and interested in pursuing measures to control them (North Carolina Wildlife Resources Commission 2012).

Since approximately 2005, red wolf numbers within the five-county NC NEP have declined significantly. At present, in the five-county NC NEP, the birth rate is not sufficient to overcome the losses to mortality. This situation is further aggravated by introgression, which effectively reduces births of pure red wolves. There are now insufficient unrelated red wolves to replace lost breeders, and, therefore, the population cannot recover from their losses and overcome mortality. This has resulted in a steadily declining population (USFWS 2018). Without substantial intervention, complete loss of the NC NEP will likely occur within as few as 8 years (Faust et al. 2016). The NC NEP could avoid extirpation and be viable (less than 10 percent chance of extirpation in 125 years) as a population with intervention (Faust et al. 2016; see also USFWS 2018).

However, based on our experience over the past decade and the current status of the species, we conclude that our current regulations are not conducive to increases in red wolf reproduction and survival in the NC

NEP, and, in fact, the likelihood of the NC NEP persisting under the current regulations is very low. Indeed, the red wolf PVA indicates that under current management, the NC NEP is projected to be extirpated in as few as 8 years (Faust et al. 2016). The current conditions in the NC NEP are not favorable for red wolf self-sustainability and survival (Hinton et al. 2017a). Hinton et al. (2017a) concluded that ''[a]lthough the RWAMWP was successful in limiting coyote introgression (Gese and Terletzky 2015, Gese et al. 2015), it was not successful in providing conditions favorable for red wolf survival.'' Despite the considerable financial, personnel, and logistical investment, basic conditions conducive to wolf population self-sufficiency simply have not been achieved. The main reasons for the presence of these unfavorable conditions include lack of authorization to release additional animals from the captive population. The current regulations do not authorize the release of animals from the captive population beyond the 12 specified in the original 1986 10(j) rule (51 FR 41790; November 19, 1986). An additional issue creating unfavorable conditions is anthropogenic mortality and subsequent population decline and hybridization with coyotes, the combination of which the RWAMWP was not designed to address (Hinton et al. 2017). The proposed regulations seek to address these issues by authorizing the release of up to five animals per year from the captive population into the NC NEP management area and the implementation of the RWAMWP. By providing a new framework for managing red wolves on the Alligator River National Wildlife Refuge and the Dare County Bombing Range, we anticipate having at least two packs of red wolves in the NC NEP management area.

As noted above, the RWAMWP was implemented to establish a framework to limit hybridization between red wolves and coyotes, not to address factors affecting red wolf survival such as excessive anthropogenic mortality. Serenari et al. (2018) stated that red wolf recovery efforts will need to overcome political and logistical obstacles to human coexistence with red wolves. They analyzed data regarding human attitudes toward red wolf and coyote management in the context of Stone's (2002) policy goals framework (equity, liberty, security, and efficiency). This proposed rule offers the opportunity to foster coexistence by increasing freedom of private landowners regarding management of canids on their lands.

The current five-county NC NEP is the only area in the State requiring a permit for coyote hunting and a prohibition on nighttime coyote hunting, due to the presence of red wolves and the increased risk of mistaken identity. This disparate treatment of landowners in the five-county NC NEP raises equity issues that foster resentment towards the presence of red wolves and has limited access to private lands for red wolf managers. This resentment is one of the most important factors hindering the conservation of the red wolf. Implementing this proposed rule is expected to minimize or even eliminate landowner resentment toward the red wolf, therefore furthering the conservation of the species.

Implementing this proposed rule will also increase local residents' sense of security, as having private lands identified as part of a Federal endangered species recovery program has raised landowner concerns about potential land use restrictions, although no restrictions have ever been proposed by the Service.

Implementing this proposed rule will also increase the efficiency of red wolf conservation efforts by focusing Service resources within the smaller NC NEP management area. This could have the further benefit of allowing Service resources to be redirected to other species recovery efforts, increasing capacity of the captive population and exploring additional reintroduction opportunities.

Fostering coexistence between people and wolves is an essential element of all wolf conservation efforts, particularly so for the red wolf given that the vast majority of its historical range is comprised of private land. The extent to which this proposed rule fosters coexistence will depend on the ability of the Service and stakeholders to define policy goals related to red wolf recovery in terms of equity, liberty, security, and efficiency that balance the interests of those who support red wolf conservation and those with grave concerns regarding red wolf conservation. Red wolves in the NC NEP would continue to use private lands. Animals having genetic importance may be trapped and moved to either the NC NEP management area or captivity; however, most would remain on the landscape with their survival dependent on landowner tolerance and cooperation without regulation. It is unknown whether such a balance can be struck in eastern North Carolina or elsewhere, but this proposed rule seeks to find that balance. The Service is committed to investing locally in public education and outreach, with a goal towards local red wolf appreciation and peaceful coexistence with landowners since landowners will have no take prohibitions of red wolves on private lands.

(3) What are the relative effects that establishment of an experimental population will have on the recovery of the red wolf?

This proposed rule would have several beneficial effects that further the conservation of the species. First and foremost, it would retain a wild population of red wolves to exercise natural behaviors and adaptations to wild conditions. At a minimum, these animals would be important for retaining these aspects of red wolf behavioral ecology and serve as a wild stock for future reintroduction efforts. Second, it would enable the Service to focus limited resources on broader recovery efforts such as working with partners to grow the captive population to the established recovery goal and exploring additional reintroduction sites. Third, this proposed rule has a goal of furthering red wolf appreciation and peaceful coexistence with local landowners since landowners will have no take prohibitions of red wolves on private lands. If successful, this would be invaluable tools for red wolf recovery range-wide.

The risk associated with the proposed action is that the very small number of red wolves that can be supported within the proposed NC NEP management area itself would face a continuing high risk of extirpation. We expect that there could still be some level of gunshot mortality, but we believe that, over time, if landowners adjacent to but outside the NC NEP management area are no longer regulated differently from the rest of the State, these circumstances would improve. Countering the risk of increased mortality outside the smaller NC NEP management area risk would require regular augmentation of the NC NEP with releases from the captive population. Absent careful management, such releases could have an adverse effect on the captive population. We believe this risk could be minimized or eliminated by carefully managing the captive population and increasing the capacity of the captive breeding facilities. Additionally, red wolves released from the captive population into the wild may engage in intraspecific strife with existing members of the NC NEP, which could upset group dynamics of established packs. We believe this risk can also be effectively managed through careful consideration of the number, timing,

location, and methods of adding new animals to the NC NEP.

There have been significant changes to the red wolf population and red wolf management in the NC NEP since the regulations were revised in 1995. As discussed earlier, the 1995 final rule was promulgated before management of red wolf and coyote interactions became a primary management consideration. As such, the current regulations do not explicitly incorporate RWAMWP activities. Additionally, the 1986 regulations explicitly authorized the release of only 12 red wolves into the NC NEP, whereas many more than 12 red wolves have been released outside the authorities under the current regulations, and evidence indicates that continuing additional releases are necessary to maintain the size and genetic health of the population (Faust et al. 2016). Further, we believe it is apparent that the current regulations are not effective in terms of fostering coexistence between people and red wolves, and that changes are needed to reconcile red wolf conservation with landowner needs and State efforts to manage coyotes. The current regulations are no longer effective in addressing the current and future management needs of the red wolf, and preclude the development of sound management strategies for this species. This proposed rule would explicitly authorize actions needed to carry out the RWAMWP, authorize additional releases from the captive population, and provide a new means of fostering coexistence between landowners and red wolves and cooperation among the Service, state, and landowners.

(4) What is the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area?

In terms of the Federal lands within the proposed NC NEP management area, we anticipate that ongoing actions to manage red wolves would continue and be accompanied with additional measures to further the conservation of red wolves and their habitat (as appropriate in consideration of budgetary and other management considerations), including implementation of the RWAMWP within the NC NEP management area. Beyond the proposed NC NEP management area the ability of our partners and stakeholders to foster coexistence between people and red wolves on private land will largely determine the potential effects on the population. Potential changes from the State regarding lifting coyote hunting restrictions based on the proposed NC NEP management area is expected to decrease public dissent over red wolves, once landowners feel unencumbered to deal with coyote issues on their land.

Peer Review

In accordance with our Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, which was published on July 1, 1994 (59 FR 34270), and an August 22, 2016, memorandum clarifying the Service's interpretation and implementation of that policy, we will seek the expert opinion of at least three appropriate, independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such a review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

Supporting Documents

A draft environmental assessment (DEA) has been prepared for this action. The DEA and other materials relating to this proposal can be found on our website at *http://www.fws.gov/Raleigh* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0035.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 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 proposed rule in a manner consistent with these requirements.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) regulatory action because this proposed rule is not significant under E.O. 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 60 *et seq.*), whenever a Federal 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 effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that, if adopted as proposed, this rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

The area that would be affected under this rule includes Federal lands (NWR and Department of Defense) in portions of Dare and Hyde Counties. We do not expect this proposed rule would have significant effects on any activities within Federal, State, or private lands because of the regulatory flexibility for Federal agency actions provided by the proposed rule. Section 7(a)(2) of the Act requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an endangered or threatened species or adversely modify its critical habitat. For the purposes of section 7(a)(2) of the Act, we treat an NEP as a threatened species only when the NEP is located within a National Wildlife Refuge or unit of the National Park Service. Under this proposed rule, this means intra-agency consultation would be required for activities on the Alligator River NWR.

When members of a NEP are located outside a National Wildlife Refuge or National Park Service unit (in this case, on Dare County Bombing Range), then, for the purposes of section 7, they are treated as species proposed for listing, not as threatened species. This means section 7(a)(2) does not apply. Instead, section 7(a)(4) applies. This provides the Service with additional flexibility because under section 7(a)(4), Federal agencies are only required to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. Additionally, section 7(a)(4) conference only results in nonbinding recommendations that are optional to the agencies carrying out, funding, or authorizing the action at issue. Applying this framework to the proposed rule, section 7(a)(2) consultation would not be required for actions that occur outside of Alligator River NWR (*i.e.,* on Dare County Bombing Range). Additionally, the experimental population of red wolves being proposed in this rule has been determined to be ''nonessential''; that means the NEP is, by definition, not essential to the survival of the species. As a result, no action affecting the NEP could be likely to jeopardize the species under section 7(a)(4) of the Act. Therefore, some modifications to proposed Federal actions within Alligator River NWR and Dare County Bombing Range may occur to benefit the red wolf, but we do not expect projects to be substantially modified because these lands are already being administered in a manner that is compatible with the existing red wolf NC NEP.

This proposed rule would authorize all forms of take of red wolves outside of the NEP management area except on Federal Lands and prescribe the forms of incidental take within the NC NEP management area, as described below. The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as, agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NC NEP management area that are in accordance with applicable laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes would not be authorized. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property near the NC NEP management area are timber production, agriculture, outdoor recreation, and activities associated with private residences. We believe the presence of the red wolf will not affect the use of lands for these purposes because there will be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or private landowners due to the presence of the red wolf, and Federal agencies would have to comply with section 7(a)(4) of the Act only in areas outside Alligator River NWR lands (*i.e.,* Dare County Bombing Range). Therefore, this proposed rule is not expected to have any significant adverse impacts to activities on private lands. In fact, the proposed rule would represent a substantial increase in regulatory flexibility on non-Federal lands due to the proposed changes in the regulation of take of red wolves outside the NC NEP management area.

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.*):

(1) This rule would not ''significantly or uniquely'' affect small governments. We have determined and certify under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). The NEP area designation for the red wolves would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This proposed rule would allow for the take of reintroduced red wolves when such take is incidental to an otherwise legal activity, in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe that the NC NEP would conflict with existing or proposed human activities.

A takings implication assessment is not required because this rule (1) would not effectively compel a property owner to suffer a physical invasion of property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. If adopted as proposed, this rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a federalism summary impact statement is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in North Carolina. Achieving the recovery goals for this species will contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments would not change; and fiscal capacity would not be substantially directly affected. The proposed rule maintains the existing relationship between the State and the Federal Government, and is undertaken in coordination with the State of North Carolina. Therefore, this proposed rule does not have significant Federalism effects or implications to warrant the preparation of a federalism summary impact statement under the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

This rule does not contain any new collection 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.*). OMB has previously approved the information collection requirements associated with endangered and threatened wildlife—experimental populations (50 CR 17.84) and assigned

OMB Control Number 1018–0095 (expires 12/31/2020). We estimate the annual burden associated with this information collection to be 52.5. 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

To ensure that we consider the environmental impacts associated with this proposed rule, we have prepared a DEA pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). In May 2017, we published an advance notice of proposed rulemaking and notice of intent to prepare a NEPA document (82 FR 23518; May 23, 2017). This initiated a public scoping process that included a request for written comments and two public scoping meetings in June 2017. We have incorporated information collected since that scoping process began in the development of a DEA. We will use information from this analysis to inform our final decision.

Government-to-Government Relationship With Tribes

In accordance with the presidential memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951; May 4, 1994), Executive Order 13175 (65 FR 67249; November 9, 2000), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have determined that there are no tribal lands affected by this proposed rule.

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not expected to significantly affect energy supplies, distribution, or use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2018–0035 or upon request from the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Service's Southeast Region.

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. Amend § 17.11(h) by revising the entry for ''Wolf, red'' under MAMMALS in 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
MAMMALS				
*	*	*	*	* * *
Wolf, red	*Canis rufus*	Wherever found, except where listed as an experimental population.	E	32 FR 4001, 3/11/1967; 51 FR 41790, 11/19/1986; 56 FR 56325, 11/4/1991; 60 FR 18941, 4/13/1995.
Wolf, red	*Canis rufus*	U.S.A. (portions of NC—see § 17.84(c)(4)).	XN	51 FR 41790, 11/19/1986; 56 FR 56325, 11/4/1991; 60 FR 18941, 4/13/1995; [**Federal Register** citation of the final rule]; 50 CFR 17.84(c)[10j].
*	*	*	*	* * *

■ 3. Amend § 17.84 by revising paragraph (c) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(c) Red wolf (*Canis rufus*).

(1) *Purpose.* The U.S. Fish and Wildlife Service (Service) finds it necessary to establish regulations governing management of the experimental population of red wolves to further the conservation of the red wolf.

(2) *Determinations.* (i) The red wolf population established in the designated area identified in paragraph (c)(4) of this section is a nonessential experimental population under § 17.81(c)(2) and is referred to as the North Carolina nonessential experimental population (NC NEP). This nonessential experimental population will be managed according to the provisions of this paragraph. The Service does not intend to change the nonessential experimental designation to essential experimental. Critical habitat cannot be designated under the nonessential experimental classification (16 U.S.C. 1539(j)(2)(C)(ii)).

(ii) The designated experimental population area the NC NEP is within the species' probable historical range. The red wolf is otherwise extirpated in the wild, and, therefore, this experimental population is wholly separate from any other known red wolves.

(3) *Definitions.* Key terms used in this paragraph have the following definitions:

(i) *Depredation* means the confirmed killing or wounding of lawfully present domestic animals by one or more red wolves. The Service or other Service-designated agencies will confirm cases of red wolf depredation.

(ii) *Designated agency* means a Federal, State, tribal or private agency or entity designated by the Service to assist in implementing this paragraph, all or in part, consistent with a Service-approved management measure, conference opinion pursuant to section 7(a)(4) of the Act, cooperative agreement pursuant to section 6(c) of the Act as described in § 17.31 for State

conservation agencies with authority to manage red wolves, or a valid permit issued by the Service through § 17.32.

(iii) *Domestic animal* means livestock, defined at paragraph (c)(3)(ix) of this section; pets; and non-feral dogs.

(iv) *Federal land* means public land under the administration of Federal agencies including, but not limited to, the Service, Department of Defense, National Park Service, or U.S. Forest Service.

(v) *Feral dog* means any dog (*Canis familiaris*) or wolf-dog hybrid that, because of absence of physical restraint or conspicuous means of identifying it at a distance as non-feral, is reasonably thought to range freely without discernible, proximate control by any person. Feral dogs do not include domestic dogs that are penned, leased, or otherwise restrained (*e.g.,* by shock collar) or which are working livestock or being lawfully used to trail or locate wildlife.

(vi) *Harass* means intentional or negligent actions or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering.

(vii) *Intentional harassment* means deliberate, pre-planned harassment of red wolves, including by less-than-lethal means (such as 12-gauge shotgun rubber bullets and bean-bag shells) designed to cause physical discomfort and possible temporary physical injury, but not death. Intentional harassment includes situations where red wolves may have been unintentionally attracted—or intentionally tracked, waited for, chased, or searched out—and then harassed.

(viii) *Livestock* means cattle, goats, sheep, horses or other domestic animals defined as livestock in Service-approved State management plans. Poultry is not considered livestock under this paragraph.

(ix) *Non-Federal land* means any lands not owned by the Federal government.

(x) *Opportunistic harassment* means scaring any red wolf from the immediate area by taking actions such as discharging firearms or other projectile-launching devices in proximity to, but not in the direction of, the wolf; throwing objects at the wolf; or making loud noise in proximity to the wolf. Such harassment might cause temporary, non-debilitating physical injury, but is not reasonably anticipated to cause permanent physical injury or death.

(xi) *Problem red wolves* means red wolves that, for purposes of management and control by the Service or its designated agency, are:

(A) Individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were involved in a depredation on lawfully present domestic animals;

(B) Habituated to humans, human residences, or other facilities largely occupied by humans; or

(C) Aggressive towards humans when unprovoked.

(xii) *Service-approved management plan* means a management plan approved by the Regional Director or Director of the Service through which Federal, State, or tribal agencies may become a designated agency. The management plan must address how red wolves will be managed to achieve conservation goals in compliance with the Act, these regulations, and other Service policies. If a Federal, State, tribal or private agency becomes a designated agency through a Service-approved management plan, the Service will help coordinate activities while retaining authority for program direction, oversight, guidance and authorization for red wolf removals.

(xiii) *Take* means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)).

(xiv) *Translocation* means the release of red wolves back into the wild that have previously been in the wild.

(xv) *Unintentional take* means the take of a red wolf by a person if the take is unintentional and occurs while engaging in an otherwise lawful activity, occurs despite the use of due care, is coincidental to an otherwise lawful activity, and is not done on purpose. Taking of a red wolf by poisoning or shooting within the NC NEP management area will not be considered unintentional take.

(xvi) *Wounded* means exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a red wolf bite.

(4) *Designated area.* The boundaries of the NC NEP management area correspond to all lands within the Alligator River National Wildlife Refuge and the Dare County Bombing Range. All red wolves in the wild are considered part of the NC NEP. Red wolves that disperse outside the Alligator River National Wildlife Refuge and the Dare County Bombing Range will be managed according to the measures set forth in this paragraph for red wolves outside the NC NEP management area.

(5) *Prohibitions.* Take of any red wolf in the NC NEP management area is prohibited, except as provided at paragraph (c)(7) of this section. Additionally, the following actions are prohibited:

(i) This paragraph does not alter or supersede the rules governing the take of wildlife on units of the National Wildlife Refuge System. In accordance with 50 CFR 27.21, no person shall take any animal or plant on any national wildlife refuge, except as authorized under 50 CFR 27.51 and 50 CFR parts 31, 32, and 33.

(ii) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any red wolf or wolf part except as authorized in this paragraph or by a valid permit issued by the Service under § 17.32. If a person kills or injures a red wolf or finds a dead or injured red wolf or red wolf parts within the NC NEP management area, the person must not disturb them (unless instructed to do so by the Service or a designated agency), must minimize disturbance of the area around the carcass, and must report the incident to the Eastern North Carolina Ecological Services Field Sub-Office in accordance with paragraph (c)(6) of this section.

(iii) Purposely taking a red wolf with a trap, snare, or other type of capture device within the NC NEP management area is prohibited (except as authorized in paragraph (c)(7) of this section) and will not be considered unintentional take.

(6) *Reporting requirements.* Unless otherwise specified in this paragraph or in a permit, any take of a red wolf must be reported to the Service or a designated agency within 24 hours. Report any take of red wolves, including opportunistic harassment, to the Service either by U.S. mail at Eastern North Carolina Ecological Services Field Sub-Office, 100 Conservation Way, Manteo, NC 27954; or by telephone at (252) 473–1132. Additional contact information can also be found on the Red Wolf Recovery Program's website at *https://www.fws.gov/southeast/wildlife/mammal/red-wolf/.* Unless otherwise specified in a permit, any red wolf or red wolf part taken legally must be turned over to the Service, which will determine the disposition of any live or dead red wolves.

(7) *Allowable forms of take of red wolves within the NC NEP Management Area.* Take of red wolves in the NC NEP management area is allowed as follows:

(i) *Take in defense of human life.* Under 16 U.S.C. 1540(a)(3) and § 17.21(c)(2), any person may take (which includes killing as well as

nonlethal actions such as harassing or harming) a red wolf in self-defense or defense of the lives of others. This take must be reported in accordance with paragraph (c)(6) of this section. If the Service or a designated agency determines that a red wolf presents a threat to human life or safety, the Service or the designated agency may kill the red wolf or place it in captivity.

(ii) *Take for research purposes.* The Service may issue permits under § 17.32, and designated agencies may issue permits under State and Federal laws and regulations, for individuals to take red wolves pursuant to scientific study proposals approved by the agency or agencies with jurisdiction for red wolves and for the area in which the study will occur. Such take should lead to management recommendations for, and thus provide for the conservation of, the red wolf.

(iii) *Unintentional take.* (A) Take of a red wolf within the NC NEP management area by any person is allowed if the take is unintentional take and occurs while engaging in an otherwise lawful activity such as while driving the speed limit. Such take must be reported in accordance with paragraph (c)(6) of this section. Permitted hunters hunting on the refuge have the responsibility to identify their quarry or target before shooting; therefore, shooting a red wolf as a result of mistaking it for another species will not be considered unintentional take.

(B) Federal or State agency employees or their contractors may take a red wolf or wolf-like animal if the take is unintentional and occurs while engaging in the course of their official duties. This includes, but is not limited to, military training and testing. Take of red wolves by Federal or State agencies must be reported in accordance with paragraph (c)(6) of this section.

(C) Take of red wolves by U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (USDA–APHIS–WS) employees while conducting official duties associated with wildlife damage management activities for species other than red wolves may be considered unintentional if it is coincidental to a legal activity and the USDA–APHIS–WS employees have adhered to all applicable USDA–APHIS–WS policies, red wolf standard operating procedures, and reasonable and prudent measures or recommendations contained in USDA–APHIS–WS biological and conference opinions.

(8) *Allowable forms of take of red wolves outside the NC NEP Management Area.* On non-Federal lands anywhere outside the NC NEP management area, there are no prohibitions on the take of red wolves. Reporting take to the Service is encouraged. If the animal taken has a telemetry collar, said collar is the property of the Service or the NCWRC and must be returned. While there are no take prohibitions outside of the NC NEP management area, the prohibition on possessing, selling, delivering, carrying, transporting, shipping, importing, or exporting red wolves or red wolf parts set forth at paragraph (c)(5)(ii) of this section applies to red wolves taken outside the NC NEP management area.

(9) *Take by Service personnel or a designated agency.* The Service or a designated agency may take any red wolf in a manner consistent with a Service-approved management plan, biological opinion pursuant to section 7(a)(2) of the Act, conference opinion pursuant to section 7(a)(4) of the Act, cooperative agreement pursuant to section 6(c) of the Act as described at § 17.31 for North Carolina Wildlife Resources Commission, or a valid permit issued by the Service through § 17.32.

(A) The Service or designated agency may use leg-hold traps and any other effective device or method for capturing or killing red wolves to carry out any measure that is a part of a Service-approved management plan or valid permit issued by the Service under § 17.32. The disposition of all red wolves (live or dead) or their parts taken as part of a Service-approved management activity must follow provisions in Service-approved management plans or interagency agreements or procedures approved by the Service on a case-by-case basis.

(B) The Service or designated agency may capture, kill, subject to genetic testing, place in captivity, or euthanize any wolf hybrid found within the NC NEP that shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes; that was raised in captivity, other than as part of a Service-approved red wolf recovery program; or that has been socialized or habituated to humans. If determined to be a red wolf, the wolf may be returned to the wild on-site, released within the NC NEP management area or put in captivity.

(C) To manage any wolves determined to be problem red wolves, as defined at paragraph (c)(3)(xii) of this section, the Service or designated agency may carry out intentional or opportunistic harassment, nonlethal control measures, capture, sterilization, translocation, placement in captivity, or lethal control. To determine the presence of problem red wolves, the Service will consider all of the following:

(1) Evidence of wounded domestic animal(s) or remains of domestic animal(s) that show that the injury or death was caused by red wolves;

(2) The likelihood that additional red wolf-caused depredations or attacks of domestic animals may occur if no harassment, nonlethal control, translocation, placement in captivity, or lethal control is taken;

(3) Evidence of attractants or intentional feeding (baiting) of red wolves; and

(4) Evidence that red wolves are habituated to humans, human residences, or other facilities regularly occupied by humans, or evidence that red wolves have exhibited unprovoked and aggressive behavior toward humans.

(10) *Management.* (i) Within the NC NEP management area, the Service or designated agencies or partners will develop and implement a plan for the adaptive management of red wolves. This plan will include all actions needed to implement the Red Wolf Adaptive Management Work Plan including, but not limited to: Release of up to five animals per year from the captive population or the St. Vincent NWR propagation site into the NC NEP; deployment of placeholder animals; movement of animals within the NC NEP; trapping, handling, and monitoring members of the NC NEP population; and moving animals from the NC NEP into captivity as needed. Any updates to the adaptive management plan will be made public.

(ii) The Service may develop and implement other management actions to benefit red wolf recovery in cooperation with the North Carolina Wildlife Resources Commission, willing private landowners, and other stakeholders. Such actions may include actions identified in biological opinions pursuant to section 7(a)(2) of the Act, conference opinions pursuant to section 7(a)(4) of the Act, cooperative agreements pursuant to section 6(c) of the Act as described in § 17.31 for North Carolina Wildlife Resources Commission, or a valid permit issued by the Service through § 17.32.

(11) *Evaluation.* The Service will evaluate the effectiveness of these regulations at furthering the conservation of the red wolf. At 5-year intervals concurrent with the species' 5 year reviews, the Service will evaluate the experimental population program, focusing on modifications needed to improve the efficacy of these regulations, and the contribution the experimental population is making to the conservation of the red wolf.

Evaluation will be based on explicit objective and measurable criteria that encompass relevant scientific, management, human-dimension, and available resources considerations.

* * * * *

Dated: June 15, 2018.

James W. Kurth,

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

[FR Doc. 2018–13906 Filed 6–27–18; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 83, No. 125

Thursday, June 28, 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

Agricultural Marketing Service

[Doc. No. AMS–DA–18–0026]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension of and revision to the currently approved information collection.

DATES: Comments on this notice must be received by August 27, 2018 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *www.regulations.gov.* Written comments may also be submitted to Camia R. Lane, Grading and Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968—South Building, 1400 Independence Avenue SW, Washington, DC 20250–0230: Tel: (202) 720–1671, Fax: (202) 720–2643, or via email at *Camia.Lane@ams.usda.gov.* All comments should reference the docket number (same number as above assigned by Originating Program), the date, and the page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, at *www.regulations.gov* and will be included in the record and made available to the public.

FOR FURTHER INFORMATION CONTACT: Camia R. Lane, Grading and Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968—South Building, 1400 Independence Avenue SW, Washington, DC 20250–0230: Tel: (202) 720–1671, Fax: (202) 720–2643.

SUPPLEMENTARY INFORMATION:

Title: Requirements Under Regulations Governing Inspection and Grading Services of Manufactured or Processed Dairy Products.

OMB Number: 0581–0126.

Expiration Date of Approval: November 30, 2018.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*) directs the Department to develop programs which will provide for and facilitate the marketing of agricultural products. One of these programs is the USDA voluntary inspection and grading program for dairy products, its regulations are contained in (7 CFR part 58). The regulations governing the certification of sanitary design and fabrication of equipment used in the slaughter, processing, and packaging of livestock and poultry products are contained in (7 CFR part 54). To ensure that a voluntary inspection program performs satisfactorily, there must be written requirements and rules for both Government and industry. The information requested is used to identify the products offered for grading; to identify a request from a manufacturer of equipment used in dairy, meat or poultry industries for evaluation regarding sanitary design and construction; to identify and contact the party responsible for payment of the inspection, grading or equipment evaluation fee and expense; and to identify applicants who wish to be authorized for the display of official identification on product packaging, materials, equipment, utensils, or on descriptive promotional materials.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0.170 hours per response.

Respondents: Dairy product manufacturers, consultants, installers, dairy equipment fabricators and meat and poultry processing equipment fabricators.

Estimated Number of Respondents: 306.

Estimated Total Annual Responses: 11,389.

Estimated Number of Responses per Respondent: 37.22.

Estimated Total Annual Burden on Respondents: 1,944 hours.

Comments are invited on: (1) 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) 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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Camia R. Lane, Grading and Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968—South Building, 1400 Independence Avenue SW, Washington, DC 20250–0230: Tel: (202) 720–1671, Fax: (202) 720–2643, or via email at *Camia.Lane@ams.usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 25, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–13911 Filed 6–27–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 25, 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 July 30, 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.

Animal and Plant Health Inspection Service

Title: Animal Disease Traceability.

OMB Control Number: 0579–0327.

Summary of Collection: The Animal Health Protection Act of 2002 (7 U.S.C. 8301–8317) is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. As part of its ongoing efforts to safeguard animal health, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) developed the Animal Disease Traceability (ADT) framework which continues to be a partnership involving APHIS, States, Tribes, and industry to provide a system for animal traceability. Traceability helps document the movement history of an animal throughout its life, including during an emergency response or for ongoing animal disease programs.

Need and Use of the Information: APHIS uses information provided by businesses, States, and Tribal Nations to facilitate animal disease traceability and support disease control, eradication, and surveillance activities. Some of the information collection activities include: Applications for use of more than official identification device; applications for and approval of tagging sites; evaluation of States and Tribes; documentation of completion of performance measures; commuter herd agreements; collection of identification devices at slaughter; obtaining official eartags; application of State shields; official identification device distribution records; certification of veterinary inspection; unauthorized removal or loss of official identification devices; reporting retagging animal records; premises identification and updates; nonproducer participant registration; official identification device applications and approved identification device manufacturer agreements and updates; animal identification number manager registration, agreements, and updates; cooperative agreements; State/Tribe quarterly reports; animal disease tractability road maps; eartag orders; program site tag information; records of tags issues and applied; coordination of tag orders with manufacturers; reporting loss, theft, and misuse of tags; removal or replacement of eartags; and recordkeeping. If this information was not collected, APHIS' ability to address traceability needs would be significantly hampered.

Description of Respondents: State, Local, or Tribal Government; Businesses.

Number of Respondents: 275,622.

Frequency of Responses: Recordkeeping; Third-Party Disclosure; Reporting: On occasion.

Total Burden Hours: 1,314,736.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–13929 Filed 6–27–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 25, 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 July 30, 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.

Foreign Agricultural Service

Title: Sugar Imported for Exports as Refined Sugar, as a Sugar-Containing Product, or Used in Production of Certain Polyhydric Alcohols.

OMB Control Number: 0551–0015.

Summary of Collection: The regulation at 7 CFR part 1530 authorizes the Foreign Agricultural Service (FAS) to issue import licenses to enter raw

cane sugar exempt from the tariff-rate quota (TRQ) for the raw cane sugar imports and related requirements on the condition that an equivalent quantity of refined sugar be: (1) Exported as refined sugar; (2) exported as an ingredient in sugar containing products; or (3) used in production of certain polyhydric alcohols. The information requirements set forth in the regulation are necessary to enable FAS to administer the licensing program in full compliance with the regulation and to ensure that licensed imports do not enter the commercial sugar market in circumvention of the TRQ for raw cane sugar.

Need and Use of the Information: FAS will collect information to verify that the world-priced sugar is actually exported and not diverted onto the domestic market, thereby undermining the objectives of politically sensitive U.S. sugar policies. This collection enables USDA to monitor participants in an effort to ensure compliance with program parameters. Without the collection, there would be increased opportunity to divert sugar onto the domestic market.

Description of Respondents: Business or other for-profit.

Number of Respondents: 325.

Frequency of Responses: Recordkeeping; Reporting; Quarterly.

Total Burden Hours: 414.

Foreign Agricultural Service

Title: Specialty Sugar Certificate Application.

OMB Control Number: 0551–0025.

Summary of Collection: The collect of information is necessary to fulfill the legal obligations of the regulation at 15 CFR 2011 subpart B to issue specialty sugar certificates, letters to importers signed by the Foreign Agricultural Service (FAS) Certifying Authority, and ensuring that U.S. importers comply with the program's requirements. The regulation sets forth the terms and conditions under which the Certifying Authority in FAS issues certificates to importers allowing them to enter specialty sugars under the tariff-rate quota (TRQ) for refined sugar.

Need and Use of the Information: The collected information will be used to: (1) Determine whether applicants for the program meet the regulation's eligibility criteria; (2) ensure that sugar to be imported is specialty sugar and meets the requirements of the regulation; (3) audit participants' compliance with the regulation; and (4) prevent entry of world-priced program sugar from entering the domestic commercial market instead of domestic specialty sugar market. The Certifying Authority needs the information to manage, plan, evaluate, and account for program activities. Less frequent collection or no collection would impede administration of the specialty sugar certificate program and reduce or eliminate imports essential to U.S. organic food and beverages processors.

Description of Respondents: Business or other for-profit.

Number of Respondents: 60.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 66.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–13889 Filed 6–27–18; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, this notice announces the intention of the Foreign Agricultural Service to request a revision of a currently approved information collection for the Agriculture Wool Apparel Manufacturers Trust Fund.

DATES: Comments on this notice must be received by August 27, 2018 to be assured of consideration.

ADDRESSES: FAS invites interested persons to submit comments on this notice. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Follow the on-line instructions for submitting comments.
- *Mail, hand delivery, or courier:* Peter W. Burr, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 5531, Mailstop 1021, Washington, DC 20250.
- *Email: iperd@fas.usda.gov*. Include Agency Name and the OMB Control Number in the subject line of the message.

Instructions: All submissions submitted by mail or electronic mail must include the Agency name and OMB Control Number. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*.

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

FOR FURTHER INFORMATION CONTACT: Peter W. Burr, (202) 720–8877, *iperd@fas.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Agriculture Wool Apparel Manufacturers Trust Fund.

OMB Control Number: 0551–0045.

Expiration Date of Approval: September 30, 2018.

Type of Request: Revision of a currently approved information collection.

Abstract: This information collection is required for affidavits submitted to FAS for claims against the Agriculture Wool Apparel Manufacturers Trust Fund. Claimants of the Agriculture Wool Apparel Manufacturers Trust Fund will be required to submit electronically a notarized affidavit and information pertaining to the production of worsted wool suits, suit-type jackets, or trousers for boys and men; or the weaving of wool yarn, wool fiber, or wool top. This electronic filing would be in lieu of the current paper document submission.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average approximately 2 hours per response for affidavits related to the Agriculture Wool Apparel Manufacturers Trust Fund.

Type of Respondents: Under the Agriculture Wool Apparel Manufacturers Trust Fund there are four groups of potential respondents, as authorized by Section 12315 of Act (Pub. L. 113–79): (1) Persons in the United States who produced worsted wool suits, suit-type jackets, or trousers for men and boys in the year prior to the application using worsted wool fabric of the kind described in headings 9902.51.11, 9902.51.15, or who wove worsted wool fabrics suitable for use in making men and boys suits under heading 9902.51.16 of the Harmonized Tariff Schedule of the United States; (2) Persons in the United States who processed wool yarn, wool fiber, or wool top of the kind described in headings 9902.51.13 or 9902.51.14 of

the Harmonized Tariff Schedule of the United States in the year prior to the application; (3) Persons in the United States who wove worsted wool fabrics of the kind described in headings 9902.51.11 and or 9902.51.15 of the Harmonized Tariff Schedule of the United States in the year prior to the application and in the years 1999, 2000, and 2001; (4) Persons in the United States who manufactured certain wool articles made with certain imported wool products during calendar years 2000, 2001, and 2002; received a 2005 payment under section 505 of the Trade and Development Act of 2000; and who continue to be a manufacturer in the United States as provided for in Section 505(a) of the Trade and Development Act of 2000.

Estimated Number of Respondents: 95.

Estimated Number of Responses: 95.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 190 hours.

Request for Comments: We are requesting comments on all aspects of this information collection to help us to: (1) Evaluate whether the collection of information is necessary for the proper performance of FAS's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of FAS's estimate of burden 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. Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578 or email at *Connie.Ehrhart@fas.usda.gov*.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for the Office of Management and Budget's approval.

E-Government Act Compliance

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

Dated: June 18, 2018.

Ken Isley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2018–13910 Filed 6–27–18; 8:45 am]

BILLING CODE 3410–10–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a planning meeting of the Vermont Advisory Committee to the Commission will convene at 1:00 p.m. (EDT) on Thursday, July 12, 2018, at Community College of Vermont, 660 Elm St., Montpelier, 05602. The purpose of the meeting is to review potential civil rights topics for future study in the state.

DATES: Thursday, July 12, 2018, at 1:00 p.m. (EDT).

ADDRESSES: Community College of Vermont, 660 Elm St., Montpelier, 05602.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov,* or 202–376–7533.

SUPPLEMENTARY INFORMATION: Persons who plan to attend the meeting and who require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Rocky Mountain Regional Office at least ten (10) working days before the scheduled date of the meeting.

Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, August 13, 2018. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

The activities of this advisory committee, including records and documents discussed during the meeting, will be available for public viewing, as they become available at: *https://database.faca.gov/committee/meetings.aspx?cid=239*. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Discussion of Potential Civil Rights Topics
Discussion of Potential Topics of Study
Open Comment
Adjourn

Dated: June 25, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–13950 Filed 6–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Census Employment Inquiry.

OMB Control Number: 0607–0139.

Form Number(s): BC–170, BC–170(SP), BC–171, and BC–171(SP).

Type of Request: Revision of a currently approved collection.

Number of Respondents: 3,000,000 respondents for the 3-year period. (1,000,000 respondents annually).

Average Hours per Response: 20 min between both forms—15 minutes for completing the BC–170 and 5 minutes for completing the BC–171.

Burden Hours: 1,000,000 burden hours for the 3-year period (333,334 burden hours annually).

Needs and Uses: Application for benefits.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13 U.S.C., Chapter 1, Subchapter II, Section 23 a and c.; Title 5 U.S.C., Part II, Chapter 13; Title 5 U.S.C. Part III, Chapter 33, Subchapter 1, Section 1 and 20.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202)395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–13890 Filed 6–27–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–13–2018]

Foreign-Trade Zone (FTZ) 138—Franklin County, Ohio; Authorization of Production Activity; International Converter (Insulation Facer); Caldwell, Ohio

On February 23, 2018, International Converter submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 138H, in Caldwell, Ohio.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 8966–8967, March 2, 2018). On June 25, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: June 25, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–13915 Filed 6–27–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–14–2018]

Foreign-Trade Zone (FTZ) 158—Vicksburg/Jackson, Mississippi; Authorization of Production Activity; International Converter (Insulation Facer); Iuka, Mississippi

On February 23, 2018, International Converter submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 158, in Iuka, Mississippi.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 8965–8966, March 2, 2018). On June 25, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: June 25, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–13916 Filed 6–27–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–853]

Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) continues to find that manufacturers/exporters of certain crystalline silicon photovoltaic products (solar products) sold solar products at less than normal value during the period of review (POR), February 1, 2016, through January 31, 2017.

DATES: Applicable June 28, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2017, Commerce published the *Preliminary Results* of this administrative review.[1] On January 26, 2018, Commerce published *Amended Preliminary Results*.[2] For the events that occurred since the *Preliminary Results* and *Amended Preliminary Results, see* the Issues and Decision Memorandum.[3] These final results cover 33 companies.[4] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[5] As a result, the revised deadline for the final results of this review was April 23, 2018. On April 5, 2018, Commerce postponed the final results of this review until May 22, 2018.[6] On May 21, 2018, Commerce postponed the final results of this review until June 21, 2018.[7]

Scope of the Order

The merchandise covered by this order is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted with this notice. A list of the issues which parties raised, and to which we responded in the Issues and Decision Memorandum, can be found in

[1] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2016–2017,* 82 FR 60370 (December 20, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Amended Preliminary Results and Preliminary Determination of No Shipments,* 83 FR 3674 (January 26, 2018) (*Amended Preliminary Results*).

[3] *See* Issues and Decision Memorandum (IDM) dated concurrently with this notice and incorporated herein by reference.

[4] The 33 companies consist of one mandatory respondent, 18 respondents not individually examined, and 14 companies for which we have reached a ''no shipments'' final finding.

[5] *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.

[6] *See* Memorandum, Certain Crystalline Silicon Photovoltaic Products from Taiwan: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated April 5, 2018.

[7] *See* Memorandum, Certain Crystalline Silicon Photovoltaic Products from Taiwan: Second Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated May 21, 2018.

the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* 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 on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain changes to the *Preliminary Results.* Specifically, we have determined to base Motech Industries, Inc. (Motech)'s cost of production on the unadjusted cost of production in its books and records, and we have excluded sales to one U.S. customer from the margin calculation, due to the lack of substantial evidence on the record that the sales were made to customers in the United States. For a full discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination of No Shipments

In the *Amended Preliminary Results,* Commerce preliminarily determined that 14 companies had no shipments during the POR.[8] These companies are: Boviet Solar Technology Co., Ltd., Baoding Jiasheng Photovoltaic Technology Co., Ltd., Baoding Tianwei Yingli New Energy Resources Co., Ltd., Beijing Tianneng Yingli New Energy Resources Co., Ltd., E-TON Solar Tech. Co., Ltd., Hainan Yingli New Energy Resources Co., Ltd., Hengshui Yingli New Energy Resources Co., Ltd., Inventec Energy Corporation, Lixian Yingli New Energy Resources Co., Ltd., Shenzhen Yingli New Energy Resources Co., Ltd., Sunengine Corporation Ltd., Tianjin Yingli New Energy Resources Co., Ltd., Yingli Energy (China) Co., Ltd., and Yingli Green Energy International Trading Company Limited.

Following publication of the *Amended Preliminary Results,* Commerce issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP), and received a response to this inquiry from CBP.[9] We received one comment from interested parties regarding these companies, from Inventec Solar Energy Corporation and its affiliates, Inventec Energy Corporation and E–TON Solar Tech. Co., Ltd., which confirmed Commerce's preliminary finding that Inventec Solar Energy Corporation had shipments, but that E–TON Solar Tech. Co., Ltd., and Inventec Energy Corporation did not have shipments.

Because the record contains no evidence to the contrary, we continue to find that these 14 companies made no shipments during the POR. Accordingly, consistent with Commerce's practice, we will instruct CBP to liquidate any existing entries of merchandise produced by these 14 companies, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[10]

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this review, we calculated a weighted-average dumping margin for Motech that is not zero, *de minimis,* or determined entirely on the basis of facts available, and have applied this rate to the non-examined companies.

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period February 1, 2016 through January 31, 2017:

Manufacturer/exporter	Weighted-average margin (percent)
Motech Industries, Inc	1.33
AU Optronics Corporation	1.33
Canadian Solar Inc	1.33
Canadian Solar International, Ltd	1.33
Canadian Solar Manufacturing (Changshu), Inc	1.33
Canadian Solar Manufacturing (Luoyang), Inc	1.33
Canadian Solar Solution Inc	1.33
EEPV Corp	1.33
Gintech Energy Corporation	1.33
Inventec Solar Energy Corporation	1.33
Kyocera Mexicana S.A. de C.V	1.33
Neo Solar Power Corporation	1.33
Sino-American Silicon Products Inc. and Solartech Energy Corp	1.33
Sunrise Global Solar Energy	1.33
Trina Solar (Schweiz) AG	1.33
Trina Solar (Singapore) Science and Technology Pte Ltd	1.33
TSEC Corporation	1.33
Vina Solar Technology Co., Ltd	1.33
Win Win Precision Technology Co., Ltd	1.33

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Duty Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[11] Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this administrative review in the **Federal Register**.

Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, and Commerce will direct

[8] *See Amended Preliminary Results,* 83 FR at 3674.

[9] *See* Memorandum, ''Response by U.S. Customs and Border Protection to Commerce's No Shipments Inquiry,'' dated February 21, 2018.

[10] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[11] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.[12] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[13] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[14]

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the ''Rates for Non-Examined Companies'' section, above.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Motech, or the non-examined companies, for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

As noted in the ''Final Determination of No Shipments'' section, above, Commerce will instruct CBP to liquidate any existing entries of merchandise produced by the ''no shipment'' companies, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed in these final results will be equal to the weighted-average dumping margins established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.50 percent,[16] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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) and 351.221(b)(5).

Dated: June 21, 2018.

Gary Taverman,

Deputy Assistance 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. List of Issues
III. Background
IV. Scope of the Order
V. Discussion of the Issues
  Comment 1: Whether Motech Had Actual or Constructive Knowledge of U.S. Sales to a Specific U.S. Customer.
  Comment 2: Whether Motech's Contract Numbers Should be Made Public for Purposes of Liquidating Entries
  Comment 3: Correction of a Cell Reference in the Preliminary Cost Calculations
  Comment 4: Whether Commerce Should Assign Cell Grades to Prime and Non-Prime Categories for Normal Value Calculation and Model Matching
  Comment 5: Whether the Draft Liquidation Instructions Properly Reference the ''All Others'' Rate
  Comment 6: Whether the Motech Liquidation Instructions Instruct CBP to Liquidate Exports by Trina Schweiz and Trina Singapore at the ''All Others'' Rate
VI. Recommendation

[FR Doc. 2018–13858 Filed 6–27–18; 8:45 am]

BILLING CODE 3510–DS–P

[12] *Id.*

[13] *Id.*

[14] *See* 19 CFR 351.106(c)(2).

[15] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Certain Crystalline Silicon Photovoltaic Products: Final Determination of Sales at Less Than Fair Value,* 79 FR 76966 (December 23, 2014).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 103rd Annual Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The 103rd Annual Meeting of the National Conference on Weights and Measures (NCWM) will be held in Tulsa, Oklahoma, from Sunday, July 15, 2018, through Thursday, July 19, 2018. This notice contains information about significant items on the NCWM Committee agendas but does not include all agenda items. As a result, the items are not consecutively numbered.

DATES: The meeting will be held on Sunday, July 15, 2018, through Wednesday, July 18, 2018, from 8:00 a.m. to 5:00 p.m. Central Time, and on Thursday, July 19, 2018, from 9:00 a.m. to 12:00 p.m. Central Time. The meeting schedule is available at *www.ncwm.net.*

ADDRESSES: This meeting will be held at the Hyatt Regency Tulsa Hotel, 100 East 2nd Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Olson, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Dr. Olson at (301) 975–2956 or by email at *douglas.olson@nist.gov*. The meeting is open to the public, but a paid registration is required. Please see the NCWM website (*www.ncwm.net*) to view the meeting agendas, registration forms, and hotel reservation information.

SUPPLEMENTARY INFORMATION: Publication of this notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals or other information contained in this notice or in publications produced by the NCWM.

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, and representatives from the private sector and federal agencies. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. NIST participates to encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity in state laws, regulations, and testing procedures used in the regulatory control of commercial weighing and measuring devices, packaged goods, and for other trade and commerce issues.

The NCWM has established multiple committees, task groups, and other working bodies to address legal metrology issues of interest to regulatory officials, industry, consumers, and others. The following are brief descriptions of some of the significant agenda items that will be considered by some of the NCWM Committees at the NCWM Annual Meeting. Comments will be taken on these and other issues during public comment sessions. This meeting also includes work sessions in which the Committees may also accept comments for clarification on issues, and where they will finalize recommendations for possible adoption at this meeting. The Committees may also withdraw or carry over items that need additional development.

These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the Annual Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices.'' Those items address weighing and measuring devices used in commercial applications, that is, devices used to buy from or sell to the public or used for determining the quantity of products or services sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality'' and NIST Handbook 133, ''Checking the Net Contents of Packaged Goods.''

NCWM S&T Committee

The following items are proposals to amend NIST Handbook 44:

SCL—Scales

Item SCL–6 S.1.2.2.3. Deactivation of a ''d'' Resolution

In 2017, the NCWM adopted a proposal requiring the value of the scale division (d) and verification scale interval (e) to be equal on Class I and Class II scales installed into commercial service as of January 1, 2020, when used in a direct sale application (*i.e.,* both parties of a weighing transaction are present when the quantity is determined). The S&T Committee will now consider a new proposal, if adopted, would prohibit the deactivation of a ''d'' resolution on a Class I or II scale equipped with a value of ''d'' that differs from ''e'' if by such action it causes the scale to round improperly.

Item SCL–7 S.1.8.5. Recorded Representations, Point of Sale Systems

The S&T Committee will consider a proposal requiring additional sales information to be recorded by cash registers interfaced with a weighing element for items weighed at a checkout stand. These systems are currently required to record the net weight, unit price, total price, and the product class, or in a system equipped with price look-up capability, the product name or code number. The change proposed would add ''tare weight'' to the list of sales information currently required. This change has been proposed as a nonretroactive requirement with an enforcement date of January 1, 2022, which means if the proposal is adopted, the additional information (*i.e.,* the tare weight) would be required to appear on the sales receipt for items weighed at a checkout stand (Point of Sale Systems) on equipment installed into commercial service as of January 1, 2022. This proposed change would not affect equipment already in service.

Item SCL–8 Sections Throughout the Code To Include Provisions for Commercial Weigh-In-Motion Vehicle Scale Systems

The S&T Committee will consider a proposal drafted by the NCWM's Weigh-In-Motion (WIM) Task Group (TG) to amend various sections of the NIST Handbook 44, Scales Code to address WIM vehicle scale systems used for commercial application to determine a vehicle's total weight. The TG is made up of representatives of WIM equipment manufacturers, the U.S. Department of Transportation Federal Highway Administration, NIST Office of Weights and Measures, truck weight enforcement agencies, state weights and measures agencies, and others.

The WIM TG was first formed in February 2016 to consider a proposal to expand the NIST Handbook 44, Weigh-In-Motion Systems Used for Vehicle Enforcement Screening—Tentative Code to also apply to legal-for-trade (commercial) and law enforcement applications. Members of the TG agreed during their first face-to-face meeting at the 2016 NCWM Annual Meeting to eliminate from the proposal any mention of a law enforcement application and focus solely on WIM vehicle scale systems intended for use in commercial applications. Members of the TG later agreed that commercial application WIM vehicle scale systems should be addressed by the Scales Code of NIST Handbook 44, rather than the Weigh-In-Motion Systems Used for Vehicle Enforcement Screening—Tentative Code.

A focus of the TG since July 2016 has been to concentrate on the development of test procedures that can be used to verify the accuracy of a WIM vehicle scale system given a proposed maintenance and acceptance tolerances of 0.2 percent and 0.1 percent, respectively, of the test loads applied during testing and considering the many different axle configurations of vehicles that will typically be weighed by these systems. Although members of the TG have not been able to reach agreement on appropriate test procedures, the TG recommended and the Committee agreed, at the 2018 NCWM Interim

Meeting, to elevate the status of this item to ''Voting'' for the upcoming 2018 NCWM Annual Meeting.

Block 1 (B1) Items Manifold Flush Systems

B1: Gen-2 Withdrawn G–S.2. Facilitation of Fraud [General Code]

B1: VTM–1 V S.3. Diversion of Measured Liquid and UR.2.6. Clearing the Discharge Hose [Vehicle Tank Meters]

The S&T Committee will consider a proposal that would permit the installation and use of a ''manifold flush system,'' which is intended to provide a safer means of flushing the different products from the delivery systems of vehicles equipped with multiple product storage compartments used commercially to deliver different products through a single vehicle-tank meter and discharge hose. This ''flushing of product'' is necessary when switching between the different products stored on and delivered from the same truck to lessen the amount of contamination of product delivered into a customer's storage vessel.

Flushing of product normally requires the delivery vehicle's operator to climb on top of the delivery truck with discharge hose and nozzle in hand to discharge product back into the appropriate storage compartment (after opening its hatch), clearing the lines for the next product to be delivered.

The manifold flush system makes possible flushing of the system at ground level, but its installation currently violates existing NIST Handbook 44 Vehicle Tank Meters (VTM) code paragraph S.3.1. Diversion of Measured Liquid by providing a means in which measured liquids can be easily diverted from the discharge line back into a product storage compartment. This diversion of metered product back into storage is considered by many to facilitate the perpetration of fraud.

The proposal exempts *all* metering systems with multiple compartments delivering multiple products through a single discharge hose from having to comply with VTM code paragraph S.3.1. and requires a means for clearing the discharge hose be provided for metering systems with multiple compartments delivering multiple products through a single discharge hose. It also allows for the installation of a manifold flush system and specifies various conditions that must be met for this flushing system to be considered acceptable.

The proposal also requires device users, who have the need to flush a discharge hose to keep a 12-month record of the different flushing operations to include dates, times, original product, new product, and gallons dispensed to avoid contamination.

Block 4 (B4), Items Terminology for Testing Standards and Block 5, Items (B5) Define ''Field Reference Standard''

Block 4 (B4) Items and Block 5 (B5) Items include all the following items:

B4: Item SCL–4 N.2. Verification (Testing) Standards [Scales Code]

B4: Item ABW–1 N.2. Verification (Testing) Standards [Automatic Bulk Weighing Systems]

B4: Item AWS–1 N.1.3. Verification (Testing) Standards, N.3.1. Official Tests; UR.4. Testing Standards [Automatic Weighing Systems]

B4: Item CLM–1 N.3.2. Transfer Standard Test; T.3. On Tests Using Transfer Standards [Cryogenic Liquid-Measuring Devices]

B4: Item CDL–1 N.3.2. Transfer Standard Test; T.3. On Tests Using Transfer Standards [Carbon Dioxide Liquid-Measuring Devices]

B4: Item HGM–1 N.4.1. Master Meter (Transfer) Standard Test; T.4. Tolerance Application on Test Using Transfer Standard Test Method [Hydrogen Gas-Metering Devices]

B4: Item GGM–1 Section 5.56.(a) [Grain-Moisture Meters ''a''] N.1.1. Air Oven Reference Method Transfer Standards, N.1.3. Meter to Like-Type Meer Method Transfer Standards, and Section 5.56.(b) [Grain-Moisture Meters ''b''] N.1.1. Transfer Standards, T. Tolerances

B4: Item LVS–1 N.2. Testing Standards [Electronic Livestock, Meat, and Poultry Evaluation Systems and/or Devices]

B4: Item OTH–2 Appendix A—Fundamental Considerations, 3.2. Tolerances for Standards; 3.3. Accuracy of Standards

B4: Item OTH–3 Appendix D—Definitions: Fifth-wheel, official grain samples, transfer standard; standard, field

B5: Item CLM–2 N.3.2. Transfer Standard Test; T.3. On Tests Using Transfer Standards [Cryogenic Liquid-Measuring Devices]

B5: Item CDL–2 N.3.2. Transfer Standard Test; T.3. On Tests Using Transfer Standards [Carbon Dioxide Liquid-Measuring Devices]

B5: Item HGM–2 N.4.1. Master Meter (Transfer) Standard Test; T.4. Tolerance Application on Test Using Transfer Standard Test Method [Hydrogen Gas Metering-Systems]

B5: Item OTH–4 Appendix D—Definitions: Field Reference, Standard Meter; Transfer Standard

Block 4 and Block 5 items are considered related agenda items. The items in these two blocks are currently assigned a developing status and while the S&T Committee may not take comments on these items at the 2018 NCWM Annual Meeting, interested parties may wish to monitor the future progress of their continued development. These two groups of items are intended to: (1) Make clear the qualifying conditions in which a standard intended for use in testing (*i.e.,* evaluating the performance of) a commercial weighing or measuring device or system can be used to conduct an official test; and (2) harmonize the terminology used to identify a suitable test standard in each of the Handbook 44 codes.

NCWM L&R Committee

The following items are proposals to amend NIST Handbook 130 or NIST Handbook 133:

NIST Handbook 130—Section on Uniform Regulation for the Method of Sale (MOS) of Commodities

Item MOS–10 2.XX. Pet Treats or Chews

The L&R Committee is recommending adoption of a uniform method of sale for Pet Treats or Chews. If adopted, the proposal will require sellers to follow labeling guidance under the Food and Drug Administration and 21 CFR 501, which defines these types of products as ''shall be sold by weight.'' This will also allow consumers to make a value comparison for similar like items.

NIST Handbook 133

Item NET–4 4.XX. Plywood and Wood-Based Structural Panels

There is no current test procedure in NIST Handbook 133, for Plywood and Wood-based Structural Panels. This will provide a test procedure for Plywood and Wood-Based Structural Panels. The L&R Committee is recommending further comment and consideration to add a testing procedure to NIST Handbook 133. This procedure follows good measuring practices for products sold by linear measure.

Authority: 15 U.S.C. 272(b).

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2018–13935 Filed 6–27–18; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF870

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Service Pier Extension Project on Naval Base Kitsap Bangor, Washington

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the United States Department of the Navy (Navy) to incidentally harass, by Level A and Level B harassment, marine mammals during construction activities associated with the Service Pier Extension (SPE) project at Naval Base Kitsap Bangor, Washington.

DATES: This Authorization is effective from July 16, 2019 through July 15, 2020.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, 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: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* 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).

Summary of Request

On August 9, 2017, NMFS received a request from the Navy for an IHA to take marine mammals incidental to pile driving and removal associated with planned construction of the SPE on Naval Base Kitsap Bangor, Washington. The application was deemed adequate and complete by NMFS on November 15, 2017.

The Navy's request is for take by Level B harassment of four marine mammal species and Level A and Level B harassment of one species. Neither the Navy nor NMFS expect serious injury or immortality to result from this activity and, therefore, an IHA is appropriate.

Description of Planned Activity

Overview

The Navy is planning to extend the service pier to provide additional berthing capacity and improve associated facilities for existing homeported and visiting submarines at Naval Base Kitsap Bangor. The project includes impact and vibratory pile driving and vibratory pile removal. Sounds resulting from pile driving and removal may result in the incidental take of marine mammals by Level A and Level B harassment in the form of auditory injury or behavioral harassment. Naval Base Kitsap Bangor is located on Hood Canal approximately 20 miles (32 kilometers) west of Seattle, Washington. The in-water construction period for the planned action will occur over 12 months. The issued IHA would be effective from July 16, 2019 through July 15, 2020 and cover two in-water work windows. A detailed description of the planned SPE project is provided in the **Federal Register** notice for the proposed IHA (83 FR 10689; March 12, 2018). Since that time, no changes have been made to the planned pile driving and removal activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to the Navy was published in the **Federal Register** on March 12, 2018 (83 FR 10689). That notice described, in detail, the Navy's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission, Whale and Dolphin Conservation (WDC), and private citizens.

Comment: The Commission commented that the method NMFS used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS's 24-hour reset policy. The Commission understands that NMFS has developed rounding criteria and recommends that it be shared with the Commission.

Response: NMFS will share the rounding criteria with the Commission following the completion of internal review and looks forward to discussing the issue with them in the future.

Comment: The Commission requested clarification of certain issues associated with NMFS's notice that one-year renewals could be issued in certain limited circumstances and expressed concern that the renewal process, as proposed, would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

Response: The process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Importantly, such renewals would be limited to where the activities are identical or nearly identical to those analyzed in the proposed IHA, monitoring does not indicate impacts that were not previously analyzed and authorized, and the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as are all IHAs. Last, NMFS will publish on our website a description of the renewal process before any renewal is issued utilizing the new process.

Comment: The Commission supports NMFS's use of the updated permanent threshold shift (PTS) thresholds and associated weighting functions that are used to estimate the Level A harassment zones. However, it feels there are some shortcomings that need to be addressed regarding the methodology for determining the extent of the Level A harassment zones based on the associated PTS cumulative sound exposure level (SEL_{cum}) thresholds for the various types of sound sources, including stationary sound sources. The Commission does not question the Level A harassment thresholds themselves, but rather the manner in which the PTS SEL_{cum} thresholds are currently implemented. The Level A and B harassment zones do not make sense biologically or acoustically due to NMFS's unrealistic assumption that the animals remain stationary throughout the entire day of the activity. The Commission believes that it would be prudent for NMFS to consult with scientists and acousticians to determine the appropriate accumulation time that action proponents should use to determine the extent of the Level A harassment zones based on the associated PTS SEL_{cum} thresholds in such situations.

Response: During the 2016 Technical Guidance's recent review, in accordance with E.O. 13795, NMFS received comments from multiple Federal agencies, including the Commission, recommending the establishment a working group to investigate more realistic means of approximating the accumulation period associated with sound exposure beyond the default 24-h accumulation period. Based on these comments, NMFS will be convening a working group to re-evaluate implementation of the default 24-h accumulation period and investigate means for deriving more realistic accumulation periods.

Comment: The Commission recommended that NMFS encourage the Navy to reduce the sizes of its shutdown zones to ensure both that pinnipeds are sufficiently protected from Level A harassment and that the activities can be completed in an appropriate manner and within an appropriate timeframe.

Response: NMFS consulted with the Navy who concurred that a reduction in zone sizes were appropriate. Additional details may be found in the Mitigation section of this notice.

Comment: The WDC recommended that lead observers should be familiar with, or adequately trained on, the differences in appearance between southern resident and transient killer whales and be able to immediately report the presence of southern resident orcas should they enter or approach Hood Canal.

Response: The Navy reports that qualified monitors would be familiar with differences in appearance between resident and transient killer whales.

Comment: The WDC recommended that the Navy install a hydroacoustic system to detect the presence of marine mammals at or near the entrance to Hood Canal, in order to monitor for southern resident killer whales, which tend to be more vocally active than transient killer whales.

Response: NMFS does not believe that a hydroacoustic system is necessary since southern resident killer whales have not occurred in Hood Canal. Additionally, due to the use of Orca network, marine mammal monitoring measures, and the high amount of attention that Southern resident killer whale movements receive, NMFS is confident that the Navy will be able to detect southern resident killer whale presence near the Hood Canal Bridge.

Comment: A comment from the public stated that there is not enough scientific data available on hearing impairment in marine mammals resulting from the proposed activities to make any type of determination. They also felt that there is a lack of scientific understanding of the potential effects of the project on the species in the surrounding area and that too many assumptions were made by NMFS in the analysis.

Response: The Potential Impacts section of the notice of proposed IHA (83 FR 10689; March 12, 2018) described numerous studies that have examined the effects of underwater sound on marine mammal, as well as those in the Technical Guidance that was directly used to assess noise-induced hearing loss. While not all marine mammal species have been subject to studies examining hearing and impacts of noise on hearing, enough data has been collected to identify specific marine mammal hearing groups as not all marine mammals have equal hearing capabilities or susceptibility to noise-induced hearing loss. Current hearing data (collected via direct behavioral and electrophysiological measurements) and predictions (based on inner ear morphology, modeling, behavior, vocalizations, or taxonomy) allow for individual species to be placed in specific hearing groups and develop composite audiograms for each hearing group. From composite audiograms, weighting functions associated with each hearing group, along with data on noise-induced hearing loss (*i.e.,* acoustic thresholds), can be applied to predict the exposures at which animals could suffer permanent hearing impairment.

NMFS uses the best available science to make determinations on the potential impacts of underwater noise on marine mammals. When specific data on a given topic or variable is not available, NMFS must make assumptions in order to conduct an analysis. In many instances, such assumptions are based on scenarios or conditions that existed at locations where NMFS had previously issued incidental take authorizations.

Comment: A private citizen comment noted NMFS fails to specify the use of a hydraulic or an electrical hammer during pile driving, and that the determination, or meaningful ''assumptions,'' of how significantly marine mammals will be affected by frequency and amplitude cannot be successful if the variation between the two hammering techniques is not taken into account. NMFS also did not define or have set criteria for the term problematic geotechnical conditions.

Response: NMFS is unaware of any data indicating a difference in frequency and/or amplitude between hydraulic and electric hammers during pile

driving. Problematic geotechnical conditions refers to any situation in which the use of a vibratory driver is insufficient to drive a pile to its required depth.

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 Hood Canal and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. An expected potential was defined as species with any regular occurrence in Hood Canal since 1995. Note that while not observed on a consistent basis, west coast transient killer whales have been recorded intermittently in Hood Canal with the most recent sightings occurring in 2016 as described below. They have also been recorded remaining in the area for extended periods. As such, they have been listed as one of the species for which authorized take has been requested. For taxonomy, we follow Committee on Taxonomy (2017). 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. All managed stocks in this region are assessed in NMFS's U.S. Pacific Marine Mammal SARs (Carretta *et al.,* 2016) or Alaska Marine Mammal SARs (Muto *et al.,* 2016). 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.,* 2016, Muto *et al.,* 2016) (available online at: *http://www.nmfs.noaa.gov/pr/sars/species.htm*).

TABLE 1—SPECIES AUTHORIZED FOR TAKE

Species	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 Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Killer whale	*Orcinus orca*	West coast transient	-; N	243 (n/a; 243, 2009) [4]	2.4	0
Family Phocoenidae (porpoises)						
Harbor porpoise	*Phocoena phocoena vomerina*	Washington inland waters	-; N	11,233 (0.37; 8,308; 2015).	66	≥7.2
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	*Zalophus californianus*	U.S.	-; N	296,750 (n/a; 153,337; 2011).	9,200	389
Steller sea lion	*Eumetopias jubatus monteriensis.*	Eastern U.S.	-; N	41,638 (n/a; 41,638; 2015).	2,498	108
Family Phocidae (earless seals)						
Harbor seal	*Phoca vitulina richardii*	Hood Canal	-; N	1,088 (0.15; unk; 1999) [4]	unk	0.2

[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; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[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.

[4] Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

A detailed description of the of the species likely to be affected by the SPE project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (83 FR 10689; March 12, 2018); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*www.nmfs.noaa.gov/pr/species/mammals/*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from pile driving and removal activities for the SPE project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (83 FR 10689; March 12, 2018) included a discussion of the effects of anthropogenic noise on marine mammals. The project would not result in permanent impacts to habitats used directly by marine mammals, such as haulout sites, but may have potential short-term impacts to food sources such as forage fish and minor impacts to the immediate substrate during installation and removal of piles during the SPE project. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (83 FR 10689; March 12, 2018) therefore that information is not repeated here; please refer to that **Federal Register** notice for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorization through this IHA, which informs both NMFS' consideration of whether the number of takes is ''small'' 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 primarily be by Level B harassment, as pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for the harbor seal, due to larger predicted auditory injury zones and regular presence around the waterfront area. Auditory injury is unlikely to occur for mid-frequency cetaceans, high frequency cetaceans or otariid species due to small predicted zones. The planned mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or 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 authorized take estimate.

Acoustic Thresholds

NMFS uses acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). 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 affected 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) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* impact pile driving).

Level A harassment—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). The Navy's planned activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and extraction) sources.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in Table 2. 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.*

Table 2. 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.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Pile driving will generate underwater noise that potentially could result in disturbance to marine mammals swimming by the project area. Transmission loss (TL) underwater is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source until the source becomes indistinguishable from ambient sound. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. A standard sound propagation model, the Practical Spreading Loss model, was used to estimate the range from pile driving activity to various expected SPLs at potential project structures. This model follows a geometric propagation loss based on the distance from the driven pile, resulting in a 4.5 dB reduction in level for each doubling of distance from the source. In this model, the SPL at some distance away from the source (*e.g.,* driven pile) is governed by a measured source level, minus the TL of the energy as it dissipates with distance. The TL equation is:

$$TL = 15\log10(R_1/R_2)$$

Where

TL is the transmission loss in dB,
R_1 is the distance of the modeled SPL from the driven pile, and
R_2 is the distance from the driven pile of the initial measurement.

The degree to which underwater noise propagates away from a noise source is dependent on a variety of factors, most notably by the water bathymetry and presence or absence of reflective or absorptive conditions including the sea surface and sediment type. The TL model described above was used to calculate the expected noise propagation from both impact and vibratory pile driving, using representative source levels to estimate the zone of influence (ZOI) or area exceeding the noise criteria.

Source Levels

For the analyses that follow, the TL model described above was used to calculate the expected noise propagation from pile driving, using an appropriate representative source level from Table 3 to estimate the area exceeding the noise criteria. The source levels were derived from the Navy's document titled *Proxy source sound levels and potential bubble curtain attenuation for acoustic modeling of nearshore marine pile driving at Navy installations in Puget Sound* (Navy 2015). In that document the Navy reviewed relevant data available for various types and sizes of piles typically used for pile driving and recommend

proxy source values for Navy installations in Puget Sound. This document may be found as Appendix B in the Navy's application.

TABLE 3—UNDERWATER NOISE SOURCE LEVELS MODELED FOR IMPACT AND VIBRATORY PILE DRIVING

Pile type	Installation method	Pile diameter	RMS (dB re 1 μPa)	Peak (dB re 1 μPa)	SEL (dB re 1 μPa² sec)
Timber	Vibratory	15–18 in (38–45 cm).	155 [1]	N/A	N/A
Concrete	Impact	18 in (45 cm)	170	184	159
Steel	Impact	24 in (60 cm)	193	210	181
		36 (90 cm)	194	211	181
	Vibratory	24 (60 cm)	161	N/A	N/A
		36 (90 cm)	166	N/A	N/A

1. Navy opted to use conservative value of 155 dB for project
Key: cm = centimeter; dB re 1 μPa = decibels referenced at 1 micropascal; N/A = not applicable; RMS = root mean square; SEL = sound exposure level.

For vibratory pile driving distances to the PTS thresholds, the TL model described above incorporated the auditory weighting functions for each hearing group using a single frequency as described in the NMFS Optional Spreadsheet (NMFS, 2016b). 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 may 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. NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources, including pile driving, NMFS User Spreadsheet predicts the closest distance at which a marine mammal, if it remained beyond that distance the whole duration of the activity, would not incur PTS.

For impact pile driving distances to the cumulative PTS thresholds for 36-inch (90 cm) and 24-inch (60 cm) steel and concrete pile, the TL model described above incorporated frequency weighting adjustments by applying the auditory weighting function over the entire 1-second SEL spectral data sets from impact pile driving. The Navy believes, and NMFS concurs, that this methodology provides a closer estimate than applying the weighting function at a single frequency as suggested in the NMFS Spreadsheet. The NMFS Spreadsheet is considered to be a conservative method that typically results in higher estimates of the PTS onset distance from the pile driving activity. The Navy analysis focused on the data provided from the Naval Kitsap Bangor Test Pile Program (steel piles) and the Puget Sound Naval Shipyard Intermediate Maintenance Facility Pier 6 Fender Pile Replacement Project (concrete piles) (Grebner *et al.,* 2016). This analysis is described in more detail in the Appendix in the application.

An unconfined bubble curtain will be used during impact driving of steel piles, since the project is located in an area without high currents. While bubble curtain performance is variable, data from the Bangor Naval Base Test Pile Program indicated an average peak SPL reduction of 8 dB to 10 dB at 10 meters was achieved for impact driving of 36- and 48-inch steel pipes (Navy 2015). However, for the SPE project, a reduction of 8 dB was utilized as shown in Table 4.

TABLE 4—INPUTS FOR DETERMINING DISTANCES TO CUMULATIVE PTS THRESHOLDS

	36″ Steel impact	24″ Steel impact	18″ Concrete impact	24″ Steel vibratory	36″ Steel vibratory	Timber
INPUTS						
Spreadsheet Tab Used	(E.1–2) Impact pile driving.	(E.1–2) Impact pile driving.	(E.1–2) Impact pile driving.	(A.1) Vibratory pile driving.	(A.1) Vibratory pile driving.	(A.1) Vibratory pile driving.
Source Level (Single Strike/shot SEL).	173 dB (assumes 8 dB attenuation)*.	173 dB (assumes 8 dB attenuation)*.	159 dB.			
Source Level (RMS SPL).				161 dB	166 dB	155
Weighting Factor Adjustment (kHz)**.	Weighting override (Grebner *et al.* 2016).	Weighting override (Grebner *et al.* 2016).	Weighting override (Grebner *et al.* 2016).	2.5	2.5	2.5
Number of strikes per day.	1600	1600	1600.			
Number of piles per day within 24-h period.	2	1	3.			
Duration of sound Production (minutes).				300	300	300
Propagation (xLogR)	15	15	15	15	15	15

TABLE 4—INPUTS FOR DETERMINING DISTANCES TO CUMULATIVE PTS THRESHOLDS—Continued

	36″ Steel impact	24″ Steel impact	18″ Concrete impact	24″ Steel vibratory	36″ Steel vibratory	Timber
Distance of source level measurement (meters).	10	10	10	10	10	10

* 8 dB reduction from use of unconfined bubble curtain during steel pipe impact driving.
** For impact driving, the TL model described above incorporated frequency weighting adjustments by applying the auditory weighting function over the entire 1-second SEL spectral data sets.

TABLE 5—CALCULATED RADIAL DISTANCES (METERS) TO UNDERWATER MARINE MAMMAL IMPACT PILE DRIVING NOISE THRESHOLDS–$_{SEL}$CUM ISOPLETHS [1]

Source type	Level A isopleths—impact driving [2]			
	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
18-in concrete [3]	2	74	19	1
24-in steel [4]	5	253	34	2
36-in steel [4]	14	740	217	12

Notes:
[1] Calculations based on $_{SEL}$CUM threshold criteria shown in Table 4.
Calculated values were rounded up the nearest meter.
[2] Representative spectra were used to calculate the distances to the injury (PTS onset) thresholds for each functional hearing group for 24-inch and 36-inchsteel pile and 24-inch (60 cm) concrete pile. Distances for 18-inch (45 cm) concrete piles assumed to be the same as 24-inch (60 cm) concrete piles.
[3] No bubble curtain planned for concrete pile.
[4] Bubble curtain will be used for 24-inch (60 cm) and 36-inch (90 cm) steel piles, and calculations include 8 dB attenuation

TABLE 6—CALCULATED RADIAL DISTANCES (METERS) TO LEVEL A UNDERWATER MARINE MAMMAL VIBRATORY PILE DRIVING NOISE ISOPLETHS

Source type	Level A isopleths—vibratory driving [1]			
	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
15–18-in timber	<1	12	5	<1
24-in steel	2	30	12	1
36-in steel	4	64	26	1.8

Notes:
[1] Distances to the injury (PTS onset) thresholds calculated using National Marine Fisheries Service calculator with default Weighting Factor Adjustment of 2.5 (NMFS, 2016b).
Calculated values were rounded up the nearest meter.

Tables 5 and 6 show the radial distances to impact and vibratory Level A isopleths. Based on the dual criteria provided in the NMFS Spreadsheet, the cumulative SEL was selected over peak threshold to calculate injury thresholds because the ensonified distances were larger.

Using the same source level and transmission loss inputs discussed above the Level B isopleths were calculated for impact and vibratory driving (Table 7). Note that these attenuation distances are based on sound characteristics in open water. The actual attenuation distances are constrained by numerous land features and islands; these actual distances are reflected in the ensonified areas given below.

TABLE 7—LEVEL B IMPACT AND VIBRATORY PILE DRIVING EXPOSURE DISTANCES AND ENSONIFIED AREAS

Pile type	Attenuation distance	Area *
Impact (160 dB)		
18-in concrete	46 m	6.64 m².
24-in steel	464 m	0.62 km².
36-in steel	541 m	0.78 km².
Vibratory (120 dB)		
15–18-in timber	2.2 km	6.8 km².

TABLE 7—LEVEL B IMPACT AND VIBRATORY PILE DRIVING EXPOSURE DISTANCES AND ENSONIFIED AREAS—Continued

Pile type	Attenuation distance	Area *
24-in steel	5.4 km	26.1 km².
36-in steel	11.7 km	49.6 km².

* Areas were adjusted wherever land masses are encountered prior to reaching the full extent of the radius around the driven pile.

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.

Transient killer whales are rare in Hood Canal and there are few data to describe transient killer whale abundance within Hood Canal. There have been anecdotal accounts of the whales in Hood Canal for decades. There was a report from one day in April 2016 and eight days in May 2016 of whales in Dabob Bay in Hood Canal (Orca Network, 2016). It is not known if these sightings were all of the same group of transient killer whales. However, the temporally discontinuous data suggest a high degree of variability in the habitat use and localized relative abundances of transient killer whales in Hood Canal. Given that whales were observed on eight days, in May 2016, NMFS will assume that whales could be observed on up to 8 days during the SPE project. The most commonly observed group size in Puget Sound from 2004 to 2010 was 6 whales (Navy 2017).

Harbor porpoises may be present in Puget Sound year-round typically in groups of one to five individuals and are regularly detected in Hood Canal. Aerial surveys conducted throughout 2013 to 2015 in Puget Sound indicated density in Puget Sound was 0.91 individuals/km^2) (95% CI=0.72–1.10, all seasons pooled) and density in Hood Canal was 0.47/km^2 (95% CI=0.29–0.75, all seasons pooled) (Jefferson *et al.,* 2016). However, after reviewing the most recent data the Navy has estimated that harbor porpoise density in Hood Canal is 0.44 animals/km^2 (Smultea *et al.,* 2017). Mean group size of harbor porpoises in Puget Sound in the 2013–2015 surveys was 1.7 in Hood Canal.

Steller sea lions are routinely seen hauled out on submarines at Naval Base Kitsap. The Navy relied on monitoring data from 2012 to 2016 to determine the average of the maximum count of hauled out Steller sea lions for each month in the in-water work window (Appendix A). The average of the monthly maximum counts during the in-water work window was 3.14.

California sea lions can occur at Naval Base Kitsap Bangor in any month, although numbers are low from June through August (Appendix A in the application).

California sea lions peak abundance occurs between October and May (NMFS, 1997; Jeffries *et al.,* 2000) but animals can occur at Naval Base Kitsap Bangor in any month. The Navy relied on monitoring data from 2012 to 2016 to determine the average of the maximum count of hauled out California sea lions for each month (Appendix A). The Navy determined abundance of California sea lions based on the average monthly maximum counts during the in-water work window (Appendix A), respectively, for an average maximum count of 48.85 animals.

Boat-based surveys and monitoring indicate that harbor seals regularly swim in the waters at Naval Base Kitsap Bangor (Appendix A in Application). Hauled-out adults, mother/pup pairs, and neonates have been documented occasionally, but quantitative data are limited. Incidental surveys in August and September 2016 recorded as many as 28 harbor seals hauled out under Marginal Wharf or swimming in adjacent waters. Additional animals were likely present at other locations during the same time of the surveys. To be conservative, the Navy estimated that an additional 7 animals were present based on typical sightings at the other piers at Bangor. Therefore, the Navy and NMFS assume that up to 35 seals could occur near the SPE project area on any given day.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

To quantitatively assess exposure of marine mammals to noise levels from pile driving over the NMFS threshold guidance, one of three methods was used depending on the species spatial and temporal occurrence. For species with rare or infrequent occurrence during the in-water work window, the likelihood of occurrence was reviewed based on the information in Chapter 3 of the application and the potential maximum duration of work days and total work days. Only one species was in this category, transient killer whale, and it had the potential to linger for multiple days based on historical information. The calculation was:

(1) Exposure estimate = Probable abundance during construction × Probable duration

Where:

Probable abundance = maximum expected group size

Probable duration = probable duration of animal(s) presence at construction sites during in-water work window

For species that regularly occur in Puget Sound, but for which local abundance data are not available, marine mammal density estimates were used when available to determine the number of animals potentially exposed in a ZOI on any one day of pile driving or extraction. Only harbor porpoise was in this category.

The equation for this species with only a density estimate and no site-specific abundance was:

(2) Exposure estimate = N × ZOI × maximum days of pile driving

Where:

N = density estimate used for each species

ZOI = Zone of Influence; the area where noise exceeds the noise threshold value

For species with site-specific surveys available, exposures were estimated by:

(3) Exposure estimate = Abundance × maximum days of pile driving

Where:

Abundance = average monthly maximum over the time period when pile driving will occur for sea lions, and estimated total abundance for harbor seals

All three pinniped species were in this category. Average monthly maximum counts of Steller sea lions and California sea lions (see Appendix A for abundance data of these species) were averaged over the in-water work window. The maximum number of animals observed during the month(s) with the highest number of animals present on a survey day was used in the analysis. For harbor seals, an abundance estimate for the Bangor waterfront was used.

The following assumptions were used to calculate potential exposures to impact and vibratory pile driving noise for each threshold.

- For formulas (2) and (3), each species will be assumed to be present in

the project area each day during construction. The timeframe for takings would be one potential take (Level B harassment exposure) per individual, per 24 hours.

• The pile type, size, and installation method that produce the largest ZOI were used to estimate exposure of marine mammals to noise impacts. Vibratory installation of 36-inch (90 cm) steel piles created the largest ZOI, so the exposure analysis calculates marine mammal exposures based on 36-inch steel piles for the 125 days when steel piles would be installed. For the estimated 35 days when concrete fender piles would be installed, impact driving was the only installation method and only 18-inch piles were proposed, so the exposure analysis calculated marine mammal exposures based on impact driving 18-inch concrete piles.

• All pilings will have an underwater noise disturbance distance equal to the pile that causes the greatest noise disturbance (*i.e.,* the piling farthest from shore) installed with the method that has the largest ZOI. If vibratory pile driving would occur, the largest ZOI will be produced by vibratory driving. In this case, the ZOI for an impact hammer will be encompassed by the larger ZOI from the vibratory driver. Vibratory driving was assumed to occur on all 125 days of steel pile driving, but not the 35 days of concrete fender pile installation.

• Days of pile driving were conservatively based on a relatively slow daily production rate, but actual daily production rates may be higher, resulting in fewer actual pile driving days. The pile driving days are used solely to assess the number of days during which pile driving could occur if production was delayed due to equipment failure, safety, etc. In a real construction situation, pile driving production rates would be maximized when possible.

Transient Killer Whale

Using the first calculation described in the above section, exposures to underwater pile driving were calculated using the average group size times the 8 days transient killer whales would be anticipated in the Hood Canal during pile driving activities. The Navy assumed that the average pod size was six individuals.

Using this rationale, 48 potential Level B exposures of transient killer whales from vibratory pile driving are estimated (six animals times 8 days of exposure). Based on this analysis, the Navy requested and NMFS has authorized 48 Level B incidental takes for behavioral harassment. Concrete and steel ZOIs from impact driving will be fully monitorable (maximum distances to behavioral thresholds of 46 m and 541 m, respectively, and maximum distance to injury thresholds is 14 m), so no killer whale behavioral or injury takes are expected from impact driving.

Harbor Porpoise

Applying formula (2) to the animal density (0.44 animals/km^2), the largest ZOI for Level B exposure (49.6 km^2) and the estimated days of steel pile driving (125), the Navy requested and NMFS has authorized 2,728 Level B incidental takes of harbor porpoises. The 49.6 km^2 ZOI excludes the area behind the PSB because harbor porpoise have never been observed within the barrier. Harbor porpoise can be visually detected to a distance of about 200 m by experienced observers in conditions up to Beaufort 2 (Navy 2017). Therefore, the concrete ZOIs will be fully monitorable (maximum distance of 46 m), so no takes were calculated for the estimated 35 days of concrete fender pile installation.

Steller Sea Lion

Formula (3) as described in the previous section was used with site-specific abundance data to calculate potential exposures of Steller sea lions during steel pile driving for the SPE project. Animals could be exposed when traveling, resting, and foraging. Because a Level A injury shut-down zone will be implemented, Level A harassment is not expected to occur.

The Navy conservatively assumes that any Steller sea lion that hauls out at Bangor could swim into the behavioral harassment zone each day during pile driving because this zone extends across Hood Canal and up to 11.7 km from the driven pile. The Navy estimated 3.14 animals could be exposed to harassment per day. These values provide a worst case assumption that on all 125 days of pile driving, all animals would be in the water each day during pile driving. Applying formula (3) to this abundance and the 125 steel pile driving days, the Navy requested and NMFS authorized the take of up to 393 Steller sea lions. If project work occurs during months when Steller sea lions are less likely to be present, actual exposures would be less. Additionally, if daily pile driving duration is short, exposure would be expected to be less because some animals would remain hauled out for the duration of pile driving. With a shutdown zone of 15 meters, Level B take is also anticipated to occur during 35 days of concrete fender pile installation. NMFS assumed that 3.14 animals would be exposed per day in the small Level B zone associated with impact driving of concrete piles resulting in 110 takes. Any exposure of Steller sea lions to pile driving noise will be minimized to short-term behavioral harassment. Therefore, NMFS has authorized the Level B take of 503 Steller sea lions.

California Sea Lion

Formula (3) was used with site-specific abundance data to calculate potential exposures of California sea lions during pile driving for the SPE project. Because a Level A injury shut-down zone will be implemented, no exposure to Level A noise levels will occur at any location. Based on site-specific data regarding the average maximum counts, the Navy assumes that 48.85 exposures per day could occur over 125 planned steel pile driving days resulting in 6,106 exposures. With a shutdown zone of 15 meters, Level B take is also anticipated to occur during 35 days of concrete fender pile installation. NMFS assumed that 48.85 animals would be exposed per day in the small Level B zone associated with impact driving of concrete piles resulting in 1,710 takes. Any exposure of Steller sea lions to pile driving noise will be minimized to short-term behavioral harassment. Therefore, NMFS has authorized 7,816 Level B takes.

Harbor Seal

The Navy calculated up to 35 harbor seals may be present per day during summer and early fall months. Exposure of harbor seals to pile driving noise will be primarily in the form of short-term behavioral harassment (Level B) during steel and concrete pile driving. Formula (3) was used with site-specific abundance data to calculate potential exposures of harbor seals due to pile driving for the SPE.

The Navy assumes that any harbor seal that hauls out at Bangor could swim into the behavioral harassment zone each day during impact pile driving. The largest ZOI for behavioral disturbance (Level B) would be 11.7 km for vibratory driving and extraction of 36-inch steel piles. Applying formula (3) to the abundance of this species (35 individuals) and the 125 pile driving days, results in 4,375 takes Level B takes. With a shutdown zone of 35 meters Level B take is also anticipated to occur during 35 days of concrete fender pile installation. NMFS assumed that 35 animals would be exposed per day in the small Level B zone associated with impact driving of concrete piles resulting in 1,225 takes.

The largest ZOI for Level A injury will be 217 m for impact driving (with bubble curtain) of 36-inch steel piles. A monitors' ability to observe the entire 217 m injury zone may be difficult because construction barges and the current Service Pier structure and associated mooring floats and vessels will interfere with a monitors' ability to observe the entire injury zone. Some individuals could enter, and remain in, the injury zone undetected by monitors, resulting in potential PTS. It is assumed that one of the 35 individuals present on the Bangor waterfront would enter, and remain in, the injury zone without being detected by marine mammal monitors each day during steel impact driving. Therefore, with 125 steel pile driving days and one individual per day being exposed to Level A noise levels, 125 Level A takes of harbor seals are authorized by NMFS. With a shutdown zone of 35 meters Level B take is also anticipated to occur during 35 days of concrete fender pile installation. NMFS assumed that 35 animals would be exposed per day in the small Level B zone associated with impact driving of concrete piles resulting in an additional 1,225 Level B takes. Therefore, NMFS has authorized 5,600 Level B takes

It should be noted that Level A takes of harbor seals would likely be multiple exposures of the same individuals, rather than single exposures of unique individuals. This request overestimates the likely Level A exposures because: (1) Seals are unlikely to remain in the Level A zone underwater long enough to accumulate sufficient exposure to noise resulting in PTS, and (2) the estimate assumes that new seals are in the Level A ZOI every day during pile driving. No Level A takes are requested for vibratory pile driving because the maximum harbor seal injury zone is 26 m and is within a practicable shutdown distance. It is important to note that the estimate of potential Level A harassment of harbor seals is expected to be an overestimate, since the planned project is not expected to occur near Marginal Wharf—the location where most harbor seal activity occurs.

Table 8 provides a summary of authorized Level A and Level B takes as well as the percentage of a stock or population authorized for take.

TABLE 8—AUTHORIZED TAKE AND PERCENTAGE OF STOCK OR POPULATION

Species	Authorized take		% population
	Level A	Level B	
Killer whale	0	48	19.7
Harbor porpoise	0	2,728	24.3
Steller sea lion	0	503	1.2
California sea lion	0	7,816	2.6
Harbor seal	125	5,600	n/a

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.

In addition to the specific measures described later in this section, the Navy would conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Use of Vibratory Installation—The Navy will employ vibratory installation to the greatest extent possible when driving steel piles to minimize high sound pressure levels associated with impact pile driving. Impact driving of steel piles will only occur when required by geotechnical conditions or to ''proof'' load-bearing piles driven by vibratory methods.

Timing Restrictions—To minimize the number of fish exposed to underwater noise and other construction disturbance, in-water work will occur during the in-water work window previously described when ESA-listed salmonids are least likely to be present (USACE, 2015), July 16–January 15.

All in-water construction activities will occur during daylight hours (sunrise to sunset) except from July 16 to September 15, when impact pile driving will only occur starting 2 hours after sunrise and ending 2 hours before sunset, to protect foraging marbled murrelets during the nesting season (April 15–September 23). Sunrise and sunset are to be determined based on National Oceanic and Atmospheric Administration data, which can be found at *http://www.srrb.noaa.gov/highlights/sunrise/sunrise.html.*

Use of Bubble Curtain—A bubble curtain will be employed during impact installation or proofing of steel piles where water depths are greater than 0.67 m (2 ft). A noise attenuation device is not required during vibratory pile driving. If a bubble curtain or similar measure is used, it will distribute air bubbles around 100 percent of the piling

perimeter for the full depth of the water column. Any other attenuation measure must provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact.

A performance test of the bubble curtain shall be conducted prior to initial use for impact pile driving. The performance test shall confirm the calculated pressures and flow rates at each manifold ring. The contractor shall also train personnel in the proper balancing of air flow to the bubblers. The contractor shall submit an inspection/performance report to the Navy for approval within 72 hours following the performance test. Corrections to the noise attenuation device to meet the performance stands shall occur prior to use for impact driving.

Soft-Start—The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a 30 second waiting period, then two subsequent reduced energy strike sets. (The reduced energy of an individual hammer cannot be quantified because it varies by individual drivers. Also, the number of strikes will vary at reduced energy because raising the hammer at less than full power and then releasing it results in the hammer ''bouncing'' as it strikes the pile, resulting in multiple ''strikes.'')

A soft-start procedure will be used for impact pile driving at the beginning of each day's in-water pile driving or any time impact pile driving has ceased for more than 30 minutes.

Establishment of Shutdown Zones and Disturbance Zones—For all impact and vibratory pile driving of steel piles, shutdown and disturbance zones will be established and monitored. The Navy will focus observations within 1,000 m for all species during these activities but will record all observations. During impact driving of concrete piles the Navy will focus on monitoring within 100 m but will record all observations. The Navy will monitor and record marine mammal observations within zones and extrapolate these values across the entirety of the Level B zone as part of the final monitoring report. To the extent possible, the Navy will record and report on any marine mammal occurrences, including behavioral disturbances, beyond 1,000 m for steel pile installation and 100 m for concrete pile installation.

The shutdown zones are based on the distances from the source predicted for each threshold level. Although different functional hearing groups of cetaceans and pinnipeds were evaluated, the threshold levels used to develop the disturbance zones were selected to be conservative for cetaceans (and therefore at the lowest levels); as such, the disturbance zones for cetaceans were based on the high frequency threshold (harbor porpoise). The shutdown zones are based on the maximum calculated Level A radius for pinnipeds and cetaceans during installation of 36-inch steel and concrete piles with impact techniques, as well as during vibratory pile installation and removal. These actions serve to protect marine mammals, allow for practical implementation of the Navy's marine mammal monitoring plan and reduce the risk of a take. The shutdown zone during any non-pile driving activity will always be a minimum of 10 m (33 ft) to prevent injury from physical interaction of marine mammals with construction equipment. Note that in the notice of proposed IHA (83 FR 10689: March 12, 2018), the Navy had requested and NMFS proposed larger shutdown zones than those authorized as depicted below. The shutdown zones were reduced to more closely align with the Level A isopleths shown in Tables 5 and 6. Reducing zone size should minimize shutdown occurrences caused by entry of animals into Level A zones. Excessive shutdowns caused by the originally proposed zones could negatively affect SPE project schedule without decreasing the risk of auditory injury to marine mammals.

During all pile driving, the shutdown, Level A, and Level B zones as shown in Tables 9, 10, and 11 will be monitored out to the greatest extent possible with a focus on monitoring within 1,000 m for steel pile and 100 m for concrete pile installation.

For steel pile impact pile driving, monitors would initiate shutdown when harbor seals approach or enter the zone. However, because of the size of the zone and the inherent difficulty in monitoring harbor seals, a highly mobile species, it may not be practical, which is why Level A take is requested.

The isopleths delineating shutdown, Level A, and Level B zones during impact driving of all steel piles are shown in Table 10. Note that the Level A isopleth is larger than the Level B isopleth for harbor porpoises.

TABLE 9—SHUTDOWN, LEVEL A, AND LEVEL B ISOPLETHS DURING IMPACT DRIVING OF STEEL PILES

Marine mammal group	Level B isopleth (meters)	Level A isopleth (meters)	Shutdown zone (meters)
Cetaceans	541	740	750
Harbor Seal	541	217	220
Sea Lions	541	12	15

The isopleths for the shutdown, Level A, and Level B zones during vibratory driving of all steel piles are shown in Table 11.

TABLE 10—SHUTDOWN, LEVEL A, LEVEL B ISOPLETHS DURING VIBRATORY DRIVING OF STEEL PILES

Marine mammal group	Level B isopleth (meters)	Level A isopleth (meters)	Shutdown zone (meters)
Cetaceans	11,700	64	100
Harbor Seal	11,700	26	30

TABLE 10—SHUTDOWN, LEVEL A, LEVEL B ISOPLETHS DURING VIBRATORY DRIVING OF STEEL PILES—Continued

Marine mammal group	Level B isopleth (meters)	Level A isopleth (meters)	Shutdown zone (meters)
Sea Lions	11,700	12	15

The shutdown, Level A, and Level B isopleths for implementation during impact driving of concrete piles are shown in Table 11. Given that the shutdown zone for all authorized species is larger than the Level A and Level B isopleths there should be no take recorded during concrete pile driving.

TABLE 11—SHUTDOWN, LEVEL A, AND LEVEL B ISOPLETHS DURING IMPACT DRIVING OF CONCRETE PILES

Marine mammal group	Level B isopleth (meters)	Level A isopleth (meters)	Shutdown zone (meters)
Cetaceans	46	74	100
Harbor Seal	46	19	35
Sea Lions	46	1	15

Note that the radii of the disturbance zones may be adjusted if in-situ acoustic monitoring is conducted by the Navy to establish actual distances to the thresholds for a specific pile type and installation method. However, any planned acoustical monitoring plan must be pre-approved by NMFS. The results of any acoustic monitoring plan must be reviewed and approved by NMFS before the radii of any disturbance zones may be revised.

The mitigation measures described above should reduce marine mammals' potential exposure to underwater noise levels which could result in injury or behavioral harassment. Based on our evaluation of the applicant's planned measures, as well as other measures considered by NMFS, NMFS has determined that the planned mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring will include the following requirements.

Marine Mammal Observers (MMOs) will be positioned at the best practicable vantage points, taking into consideration security, safety, and space limitations. During pile driving, one MMO will be stationed in a vessel, and at least four will be stationed on the pier, along the shore, or on the pile driving barge to maximize observation coverage. Each MMO location will have a minimum of one dedicated MMO (not including boat operators). There will be be 3–5 MMOs working depending on the location, site accessibility and line of sight for adequate coverage. Additional standards required for visual monitoring include:

(a) Independent observers (*i.e.,* not construction personal) are required;

(b) At least one observer must have prior experience working as an observer;

(c) Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;

(d) Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

Monitoring will be conducted by qualified observers, who will monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

(a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Advanced education in biological science or related field (undergraduate degree or higher required);

(c) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

(d) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(e) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(f) 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 and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

(g) 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.

MMOs will survey the disturbance zone 15 minutes prior to initiation of pile driving through 30 minutes after completion of pile driving to ensure there are no marine mammals present. 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). Marine Mammal Observation Record forms (Appendix A of the application) will be used to document observations. Survey boats engaged in marine mammal monitoring will maintain speeds equal to or less than 10 knots.

MMOs will use binoculars and the naked eye to search continuously for marine mammals and will have a means to communicate with each other to discuss relevant marine mammal information (*e.g.,* animal sighted but submerged with direction of last sighting). MMOs will have the ability to correctly measure or estimate the animals distance to the pile driving equipment such that records of any takes are accurate relevant to the pile size and type.

Shutdown shall occur if a species for which authorization has not been granted or for which the authorized numbers of takes have been met. The Navy shall then contact NMFS within 24 hours.

If marine mammal(s) are present within or approaching a shutdown zone prior to pile driving, the start of these activities will be delayed until the animal(s) have left the zone voluntarily and have been visually confirmed beyond the shutdown zone, or 15 minutes has elapsed without re-detection of the animal.

If animal is observed within or entering the Level B zone during pile driving, a take would be recorded, behaviors documented. However, that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown Zone, at which point all pile driving activities will be halted. The MMOs shall immediately radio to alert the monitoring coordinator/construction contractor. This action will require an immediate ''all-stop'' on pile operations. Once a shutdown has been initiated, pile driving will be delayed until the animal has voluntarily left the Shutdown Zone and has been visually confirmed beyond the Shutdown Zone, or 15 minutes have passed without re-detection of the animal (*i.e.,* the zone is deemed clear of marine mammals).

All marine mammals observed within the disturbance zones during pile driving activities will be recorded by MMOs. These animals will be documented as Level A or Level B takes as appropriate. Additionally, all shutdowns shall be recorded. For vibratory driving activities, this data will be extrapolated across the full extent of the Level B ensonified zone (*i.e.* 11.7 km radii) to provide total estimated take numbers.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include information as described in the Marine Mammal Monitoring Report (Appendix D of the application).

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that: (1) The specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality; (2) an injured or dead animal is discovered and cause of death is known; or (3) an injured or dead animal is discovered and cause of death is not related to the authorized activities, the Navy will follow the protocols described in the Section 3 of Marine Mammal Monitoring Report (Appendix D of the application). Additionally, the Navy will report any pinniped hauled out at unusual sites (*e.g.,* in work boats) to the local stranding network and to NMFS, and follow any procedures or measures stipulated by the stranding network.

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 extraction associated with the Navy SPE project as outlined previously have the potential to injure, disturb or displace marine mammals. Specifically, the specified activities may result in Level B harassment (behavioral disturbance) for five marine mammal species authorized for take from underwater sound generated during pile driving operations. Level A harassment in the form of PTS may also occur to limited numbers of one species. Level A harassment was conservatively authorized for harbor seals since seals

can occur in high numbers near the project area, can be difficult to spot, and MMO's ability to observe the entire 217 m injury zone may be slightly impaired because of construction barges and vessels. Potential takes could occur if marine mammals are present in the Level A or Level B ensonified zones when pile driving and removal occurs.

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 injury is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory driving will be the primary method of installation. This driving method decreases the potential for injury due to relatively low source levels and lack of potentially injurious source characteristics. Only piles that cannot be driven to their desired depths using the vibratory hammer will be impact driven for the remainder of their required driving depth. Noise attenuating devices (*i.e.,* bubble curtain) will be used during impact hammer operations for steel piles. During impact driving, 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. Given the number of MMOs that will be employed, observers should have a relatively clear view of the shutdown zones, although under limited circumstances the presence of barges and vessels may impair observation of small portions of shutdown zones. This will enable a high rate of success in implementation of shutdowns to avoid injury.

The Navy's planned activities are highly localized. Only a relatively small portion of Hood Canal may be affected. The project is not expected to have significant adverse effects on marine mammal habitat. No important feeding and/or reproductive areas for marine mammals are known to be near the project area. Impacts to salmonid and forage fish populations, including ESA-listed species, will be minimized by adhering to the designated in-water work period. Project-related 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, but because of the relatively small area of the habitat range utilized by each species that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Exposures to elevated sound levels produced during pile driving activities may cause behavioral responses by an animal, but they are expected to be mild and temporary. 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 reactions such as increased swimming speeds, increased surfacing time, 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, although even this reaction has been observed primarily only in association with impact pile driving. These reactions and behavioral changes are expected to subside quickly when the exposures cease. The pile driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations including Hood Canal, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in permanent hearing impairment or to significantly disrupt foraging behavior. Level B harassment will be reduced through use of mitigation measures described herein.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stocks through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- The area of potential impacts is highly localized;
- No adverse impacts to marine mammal habitat;
- The absence of any significant habitat within the project area, including rookeries, or known areas or features of special significance for foraging or reproduction;
- Anticipated incidences of Level A harassment would be in the form of a small degree of PTS to a limited number of animals from one species;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- The anticipated efficacy of the required mitigation measures in reducing the effects of the specified activity.

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 planned monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned 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 8 depicts the number of animals that could be exposed to Level A and Level B harassment from work associated with the SPE project. With the exception of harbor seals, the analysis provided indicates that authorized takes account for no more than 24.3 percent of the populations of the stocks that could be affected. These are small numbers of marine mammals relative to the sizes of the affected species and population stocks under consideration.

For the affected stock of harbor seals, no valid abundance estimate is available. The most recent abundance estimates for harbor seals in Washington inland waters are from 1999, and it is generally believed that harbor seal populations have increased significantly during the intervening years (*e.g.,* Mapes, 2013). However, we anticipate that takes estimated to occur for harbor seals are likely to occur only within some portion of the relevant populations, rather than to animals from the stock as a whole. For example, takes anticipated to occur at NBK Bangor would be expected to accrue to the same individual seals that routinely occur on haulouts at these locations, rather than occurring to new seals on each construction day. In summary, harbor seals taken as a result of the specified

activities are expected to comprise only a limited portion of individuals comprising the overall relevant stock abundance. Therefore, we find that small numbers of marine mammals will be taken relative to the population size of the Hood Canal stock of harbor seal.

Based on the analysis contained herein of the planned activity (including the planned mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must 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 CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review and signed a Categorical Exclusion memo in June 2018.

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.

No incidental take of ESA-listed species is planned 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.

Authorization

NMFS has issued an IHA to the Navy for the potential harassment of small numbers of five marine mammal species incidental to the Service Pier Extension project at Naval Base Kitsap Bangor provided the previously mentioned mitigation, monitoring and reporting requirements are incorporated.

Dated: June 22, 2018.

Elaine T. Saiz,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science and Technology for America's Oceans: A Decadal Vision

AGENCY: Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public comments.

SUMMARY: The Office of Oceanic and Atmospheric Research on behalf of the National Science and Technology Council; Committee on Environment; Subcommittee on Ocean Science and Technology (SOST) is requesting input on the content of a report, Science and Technology for America's Oceans: A Decadal Vision. The SOST is chartered under the National Science and Technology Council to advise and assist on national issues related to ocean science and technology. The SOST contributes to the goals for Federal ocean science and technology, including identifying priorities and developing coordinated interagency strategies. Science and Technology for America's Oceans: A Decadal Vision identifies pressing research needs and areas of opportunity within the ocean S&T enterprise for the coming decade, 2018–2028. The aim of this document is not to prescribe policies but to provide guidance for U.S. Federal agencies and non-federal sectors to align their resources and areas of expertise, and further build the scientific and technological foundation that will improve our knowledge and stewardship of the ocean, address issues of national and global importance, and inform decision-making for the coming decade. This notice solicits relevant public input on the draft report. The public input provided in response to this notice will inform SOST as they develop the final report.

DATES: Comments must be submitted on or before August 27, 2018.

ADDRESSES: You may submit comments by email to *oceandecadalvision@OSTP.eop.gov.* Please include ''Science and Technology for America's Oceans'' in the subject line of the message.

Instructions: The report is available for download at: *http://www.noaa.gov/stories/advancing-vision-of-science-and-technology-for-americas-oceans.* Response to this Notice of Public Comments is voluntary. Clearly indicate which section and page number, if applicable, submitted comments pertain to. All submissions must be in English. Please clearly label submissions as ''Science and Technology for America's Oceans: A Decadal Vision.'' When the final report is issued, relevant comments and the commenters' names, along with the authors' responses, may become part of the public record and be made available to view online. NOAA therefore requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this Notice of Public Comments. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Stacy Aguilera-Peterson, Office of Science and Technology Policy, (202) 456–6066, or *Stacy.E.Aguilera-Peterson@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION: The report describes:

- Five high-priority goals to advance ocean science and technology (S&T) in the coming decade;
- S&T objectives, identified as key areas to advance the U.S. Ocean S&T enterprise;
- Specific research and development (R&D) priorities to achieve each objective; and
- Areas of immediate ocean research opportunities and cross-cutting topics relevant to each of the five goals.

Dated: June 22, 2018.

David Holst,

Chief Financial/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2018–13926 Filed 6–27–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG205

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Mukilteo Multimodal Project—Season 3

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 Washington Department of Transportation (WSDOT) Ferries Division (WSF) for an incidental harassment authorization (IHA) that would cover a subset of the take authorized in an IHA previously issued to WSDOT to incidentally take marine mammals, by Level B harassment only, during construction activities associated with the Mukilteo Multimodal Project, Puget Sound, Washington. During planning of season 2 of the project (for which NMFS issued an IHA) it was assumed that the project would be completed within the year timeframe; however, that was not accomplished. Therefore, WSDOT is requesting, and NMFS is proposing to issue, an IHA authorizing incidental take for the remaining work which was already analyzed in an 2017 IHA issued to WSDOT on August 3, 2017 (herein after referred to as the 2017 IHA) (September 21, 2017). However, some changes have occurred during this year's evaluation of the project. Source levels and harassment distances have been adjusted based on recent acoustic measurements and amount of time pile driving expected to occur each day. In addition, WSDOT has requested take for three species not included in the 2017 IHA (minke whales (*Balaenoptera acutorostrata*), bottlenose dolphins (*Tursiops truncatus*), and long-beaked common dolphins (*Delphinus delphis bairdii*)) based on recent marine mammal monitoring. The proposed mitigation, monitoring, and reporting measures remain the same as prescribed in the 2017 IHA with slight modifications (*e.g.,* shut down zones distance changes) as described below.

NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the completion of Phase 2 of the Mukilteo Multimodal Project. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than July 30, 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.daly@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: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8438. Electronic copies of the original application and supporting documents (including NMFS FR notices of the original proposed and final authorizations), as well as a list of the references cited in this document, may be obtained online at *https://www.fisheries.noaa.gov/node/23111.* 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 April 7, 2016, WSDOT submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of marine mammal species incidental to construction associated with Phase 2 of the Mukilteo Multimodal Project in Mukilteo, Washington, between August 1, 2017, and July 31, 2018. NMFS issued the requested IHA on August 3, 2017, which covered Phase 2 of the project in its entirety and expires on July 31, 2018 (82 FR 44164; September 21, 2017). On January 9, 2018, we received a request from WSDOT for a subsequent authorization to take marine mammals incidental to the project because they realized all of the Phase 2 work would not be able to be completed under the existing IHA. A final version of the application, which we deemed adequate and complete, was submitted on March 1, 2018.

Description of the Proposed Activity and Anticipated Impacts

WSDOT operates and maintains 19 ferry terminals and one maintenance facility, all of which are located in Puget Sound or the San Juan Islands (Georgia Basin) (Figure 1–1 in WSDOT's application). The Mukilteo Multimodal Project is a multi-year construction project designed to improve the operations and facilities serving the mainland terminus of the Mukilteo-Clinton ferry route in Washington State. The 2017 IHA covered the installation of 661 piles of various sizes over an estimated 175 days of pile driving and removal (Table 1). WSDOT did not complete all the work, and now requests that this proposed IHA cover take incidental to the installation of the remaining piles (Table 1). The 2017 IHA authorized Level A and B harassment of two species of marine mammals and Level B harassment of seven species of marine mammals (Table 2). WSDOT requests authorization to harass these same species and an additional three species based on recent marine mammal monitoring near the project area (Table 2).

To support public review and comment on the IHA that NMFS is proposing to issue here, we refer to the documents related to the previously issued IHA and discuss any new or changed information here. The previous documents include the **Federal Register** notice of the proposed IHA (82 FR 29713; May 10, 2017), **Federal Register** notice of issuance of the 2017 IHA (82 FR 44164, September 21, 2017), and all associated references and documents. We also refer the reader to WSDOT's previous and current applications and monitoring reports which can be found at *https://www.fisheries.noaa.gov/node/23111.*

Detailed Description of the Action—A detailed description of the proposed vibratory and impact pile driving and removal activities at the Mukilteo Terminal is found in the aforementioned documents. The location, timing, and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those described in the previous notices, except that only a subset of the type and number of piles are proposed to be driven. In total, 116 piles would be installed with a vibratory hammer. Sixty five of those piles would also be proofed with an impact hammer on the same day vibratory pile driving would occur. Sixty five of the installed 24-in piles (some of which may be proofed with the impact hammer) would be temporary and would also be removed. WSDOT anticipates piles equal to or less than 36″ would be installed at a rate of 3 per day for a total of 38 days. An additional two days is needed to install the 78-in piles and 120-in piles. Sixty five of those piles would be removed at a rate of five per day for a total of 22 days. In total, up to 63 days of pile driving and removal may occur. WSDOT anticipates pile driving could occur over a seven month in-water work window (July 15-February 15).

TABLE 1—DESCRIPTION OF WORK PLANNED, ANALYZED, AND COMPLETED UNDER THE 2017 IHA AND REMAINING WORK PLANNED FOR 2018–2019

Method	Pile size (in)	Season 2 planned (2017 IHA)	Season 2 completed	Season 3 planned (2018 IHA)	Number of days	Comment
Vibratory Driving	12	139	134	0	0	Fewer needed, complete.
	24	69	4	65	22	Up to 69 temporary.
	24	48	0	26	9	Fewer needed, permanent.
	30	40	25	16	5	Permanent.
	36	6	0	6	2	Permanent.
	78	2	0	2	1	Permanent.
	120	1	0	1	2	Permanent.
	sheet	90	0	0	0	Design change, not needed.
Vibratory Removal	24	69	4	65	22	Temporary.
	30	9	0	0	0	Delayed.
	sheet	90	0	0	0	Design change, not needed.
Impact Driving	24	69	4	65	[1] 22	Proofed for load-bearing.
	30	30	25	0	0	Fewer needed, complete.

[1] Impact hammering would be conducted on same day as vibratory pile driving so these are not additional days.

Description of Marine Mammals—A description of the marine mammals in the area of the activities is found in the previously cited documents, which remains applicable to this IHA as well. In addition, we include information here on three additional species which have been recently reported in Puget Sound and which WSDOT now requests take. We include a summary table here for all species and stocks for which take is requested.

TABLE 2—SPECIES AND STOCKS EXPECTED TO OCCUR IN PROJECT 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, 2014).	624	132
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington	Y	1,918 (0.03, 1,876, 2017)	11.0	9.2
Minke whale *	*Balaenoptera acutorostrata*	California/Oregon/Washington	N	636 (0.72, 369, 2016)	3.5	1.3
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern North Pacific Southern Resident.	Y	76 (n/a, 76, 2017) [4]	0	0.14
		West coast transient	N	unk (unk, 243 2013)	2.4	0
Bottlenose dolphin *	*Tursiops truncatus*	California coastal	N	453 (0.06, 346, 2016)	2.7	≥2
Long-beaked common dolphin *.	*Delphinus delphis bairdii*	California	N	101,305 (0.49, 68,432, 2016).	657	35.4
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Washington inland waters	N	11,233 (0.37, 8,308, 2016).	66	7.2
Dall's porpoise	*Phocoenoides dalli*	California/Oregon/Washington	N	25,750 (0.45, 17,954, 2016).	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S	N	296,750 (n/a, 153,337, 2014).	9,200	389
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	N	52,139 (n/a, 41,638, 2015).	2,498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Washington northern inland waters.	N	11,036 (0.15, 1999)	1,641	43
Elephant seal	*Mirounga angustirostris*	California breeding	N	179,000 (n/a, 81,368, 2014).	2,882	8.8

[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.

[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.

[4] SRWK population abundance as of December 31, 2017 according to the Center for Whale Research.

[5] Harbor seal estimate is based on data that are greater than 8 years old, but this is the best available information for use here.

* Indicates species added.

For species analyzed in the 2017 IHA, NMFS has reviewed recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or previous determinations except what is provided below. Since issuing the 2017 IHA, NMFS published draft SARs (82 FR 60181; 19 December 2017) and the annual census for Southern Resident killer whales concluded. Stock information is updated for two species that have the potential to occur in the activity area: Humpback whale and Southern Resident killer whale. Total annual mortality and serious injury for humpback whales increased from 6.5 to 9.2 and Southern Resident killer whale abundance decreased from 78 to 76 individuals (the most recent SAR information, *i.e.,* the draft 2017 SAR for this stock, includes an abundance estimate of 83; however, we use the December 31, 2017, Center for Whale Research population estimate here). These proposed changes in the draft 2017 SARs do not affect our estimated take numbers or negligible impact and small numbers determinations, and therefore these changes do not affect our analysis. The potential presence of the three additional species (described below) during pile driving is very low; however, we are proposing to authorize take due to WSDOT's request and evidence there is a possibility they may be in the action area, albeit rarely.

Minke whale—The California-Oregon-Washington (CA-OR-WA) stock of minke whale may be found near the project site; however, this species is not common in Puget Sound. From 2013 through 2016, year-round systematic aerial surveys were conducted to better estimate marine mammal density. No minke whales were observed during these surveys within Puget Sound and on only two occasions in September 2014 were minke whales (n=2) observed in nearby Strait of Juan de Fuca (Smultea *et al.* 2017). For the years 2010 to 2016, in the August to February timeframe scheduled for this project, The Whale Museum reported a total of six sightings days for minke whale in the Mukilteo project area (TWM, 2017). During 51 days of monitoring from

September 2017 to February 2018 under the 2017 IHA, zero minke whales were observed (WSDOT, 2018).

Bottlenose dolphin—Bottlenose dolphins tend to inhabit warmer temperate and tropical waters and are not usually found in the colder waters of Puget Sound. However, bottlenose dolphins have been observed in Puget Sound as occasional visitors from both the offshore CA–OR–WA stock and California coastal stock since 1998 (CRC 2017a). More recently a group of dolphins observed in 2017 were positively identified as part of the CA coastal stock (CRC, 2017a, 2018). The more recent sightings in Puget Sound of several animals suggest a possible significant expansion of their range if they remain in the area. Such long distance travel outside their traditional range (>800 miles) may be due to long term changes in climate and shorter term fluctuations in coastal water conditions, such as those during El Niño events (CRC, 2017a). From September 2017 to February 2018, WSF conducted marine mammal monitoring during Year Two of the Mukilteo Multimodal Project. During 51 days of monitoring from September 2017 to February 2018 under the 2017 IHA, zero bottlenose dolphins were observed (WSDOT, 2018).

Long-beaked common dolphin—Long-beaked common dolphins from the California stock could be present near the project area. The earliest documented sighting of long-beaked common dolphins in Puget Sound was July 2003. In June 2011, two long-beaked common dolphins were sighted in South Puget Sound. Sightings continued in 2012, and in 2016–17. Four to twelve sightings were reported regularly, with confirmed sightings of up to 30 individuals. Four to six dolphins have remained in Puget Sound since June 2016 and four animals with distinct markings have been seen multiple times and in every season of the year as of October 2017 (CRC 2017b). During 51 days of monitoring from September 2017 to February 2018 under the 2017 IHA, zero long-beaked common dolphins were observed (WSDOT, 2018).

Potential Effects on Marine Mammals—A description of the potential effects of the specified activities on marine mammals and their habitat is found in these previous documents, which remains applicable to this IHA. There is no new information on potential effects and we anticipate the effects evaluated last year are germane to the three additional species (minke whale, bottlenose dolphin, and long-beaked common dolphin) authorized to be taken this year.

Harassment Zones—We updated three source levels (24-in vibratory pile driving and removal and 24-in impact driving) for use in calculating Level A harassment isopleths. The 2017 IHA reflected a 24-in vibratory pile driving source level of 162 decibels (dB) root mean square (rms) based on measurements at Friday Harbor; however, we believe that measurements of vibratory driving of 24-in piles at Manette Bridge support a higher source level of 166 dB rms (Loughlin, 2010). We propose to carry over that source level to estimate noise levels generated by vibratory removal of the same size pile. New analysis of measurements made at the Coupeville Terminal also supports increasing the sound exposure level (single-strike; SEL) during 24-in impact pile driving from 174 dB SEL to 178 dB SEL (WSDOT, 2017). To estimate distances to the Level B harassment isopleth for vibratory driving 24–36-in piles, we applied new acoustic measurement data (Loughlin, 2017). For this proposed IHA, we also modified the method used to estimate Level A harassment zones. The 2017 IHA analysis used a more sophisticated modeling technique, described in detail in our 2017 Notice of Proposed IHA (citation). It is not warranted to replicate that complicated process for this action. Therefore, we used the NMFS User Spreadsheet tool to estimate Level A harassment distances. This approach is more conservative than the previous modeling effort because it considers a single frequency weighting factor adjustment (WFA) in lieu of considering the full frequency spectrum. Using a single frequency WFA is likely to over-predict Level A harassment distances as described in NMFS (2016), resulting in larger Level A harassment distances. The inputs used in the spreadsheet and resulting Level A harassment distances are presented in Table 3 and 4, respectively. Table 4 also contains the distances estimated to the Level B harassment zones from each type of work. Table 5 provides the corresponding Level B harassment areas, as well as the Level A harassment areas for those species for which we propose to authorize take by Level A harassment.

TABLE 3—INPUTS INTO NMFS USER SPREADSHEET

Input parameter	Vibratory pile driving	Impact pile driving
Weighting Factor Adjustment [1]	2.5 kHz	2 kHz.
Source Level (SL)	See Table 4	See Table 4 (SEL value).
Duration	3 hours (24–36″ piles) 2 hours (78″ piles) 1 hour (120″ pile)	n/a.
Strikes per pile	n/a	300.
Piles per day	n/a	3.
Transmission loss coefficient	15	15.
Distance from SL measurement	10 m	10 m.

[1] In instances where full auditory weighting functions associated with the SEL_{cum} metric cannot be applied, NMFS has recommended the default, single frequency weighting factor adjustments (WFAs) provided here. As described in Appendix D of NMFS' Technical Guidance (NMFS, 2016), the intent of the WFA is to broadly account for auditory weighting functions below the 95 frequency contour percentile. Use of single frequency WFA is likely to over-predict Level A harassment distances.

TABLE 4—LEVEL A HARASSMENT DISTANCES CONSIDERING PILE DRIVING DURATION PER 24 HOURS

Method	Pile Size	Source Level (dB)	Level A (meters)					Level B (m)
			LF [1]	MF [1]	HF [1]	PH [1]	OT [1]	
Vibratory	24	166 rms [2]	30.6	2.7	45.3	18.6	1.3	[6] 8000
	30	174 rms [3]	104.5	9.3	154.5	63.5	4.5	[6] 8000

TABLE 4—LEVEL A HARASSMENT DISTANCES CONSIDERING PILE DRIVING DURATION PER 24 HOURS—Continued

Method	Pile Size	Source Level (dB)	Level A (meters)					Level B (m)
			LF [1]	MF [1]	HF [1]	PH [1]	OT [1]	
	36	177 rms [3]	165.6	14.7	244.9	100.7	7.1	[7] 8700
	78	180 rms [4]	200.3	17.8	296.2	121.8	8.5	[8] 20,000
	120	180 rms [4]	126.2	11.2	186.6	76.7	5.4	.....
Impact	24	178 SEL (single strike)/193 rms [5]	432.1	15.4	514.7	231.2	16.8	1,585

[1] The abbreviatation mean: LF = low frequency cetacean, MF = mid-frequency cetacean, HF = high-frequency cetacean, PH = phocid, OT = otariid.
[2] We assume vibratory removal and vibratory driving the same size pile would result in equal sound levels. Source level for 24″ piles is based on direct measurements during the Manette Bridge project (Loughlin, 2010a).
[3] Source levels for 30-in and 36-in piles is based on direct measurements during the Port Townsend Project (Loughlin, 2010b).
[4] WSDOT does not have noise data for 78 and 120-in piles; therefore, we used data from Caltrans (2015).
[5] Single strike SEL and rms values for impact driving 24-in piles is based on direct measurements during pile driving using a bubble curtain (*i.e.,* source levels are attenuated) at the Coupeville Terminal (WSDOT, 2017).
[6] Measurements during 30″ vibratory pile driving at Mukilteo in 2017 indicate pile driving was not detected at range of 7.9 km (Laughlin, 2017a). This equates to 66 km^2.
[7] At the Coleman Terminal, vibratory installation of two 36″ piles driven simultaneously was not detectable at 8.69 km (5.4 miles) (Laughlin 2017b). This equates to 69 km^2.
[8] The calculated Level B zone using a practical spreading loss model is 85,770 m; however, land is reached at a maximum of 20,000 m (Lowell Point on Camano Island). This equates to 107 km^2.

TABLE 5—CORRESPONDING HARASSMENT THRESHOLD ENSONIFIED AREAS

Method	Pile size	Level A (km^2) [1]			Level B (km^2) [2]
		HF	PH	OT	
Vibratory	24	<0.01	<0.01	<0.01	66
	30	<0.01	<0.01	.....	66
	36	0.06	0.06	.....	69
	78	0.01	0.01	.....	107
	120	0.01	0.01	.....	.....
Impact	24	0.4	0.4	.....	4

[1] Level A harassment areas are provided for species hearing groups for which Level A take is proposed.
[2] Level B harassment areas are germane to all species.

Estimated Take—A description of the methods used to estimate take anticipated to occur from the project is found in the project's aforementioned documents. The methods of estimating take are identical to those used in the previous IHA, including the use of the Navy 2015 marine mammal densities for inland Washington or most recent pinniped counts. We also updated harbor porpoise and Dall's porpoise density based on new information (Smultea et al., 2017 and Navy 2015, respectively). Because bottlenose dolphin and long-beaked common dolphin densities do not exist for this area, we used available data to estimate a sighting rate. Table 6 includes marine mammal count or density information used in the estimated take calculations.

TABLE 6—MARINE MAMMAL COUNTS AND DENSITIES USED TO ESTIMATE TAKE

	Density (ind/km^2)	Count
Harbor seal	.....	30/day [1].
CSL	.....	14/day [2].
N. elephant seal	.....	1/30 days [3].
Killer whale—transient	.....	0.3/day [4].
SSL	[5] 0.0368.	
Gray whale	[5] 0.00051.	
Humpback whale	[5] 0.00007.	
Dall's porpoise	[5] 0.039.	
Harbor porpoise	[6] 0.75.	
Minke whale	[5] 0.002.	
Bottlenose dolphin	.....	1 group of 7/30 days [7].
Long-beaked common dolphin	.....	1 group of 7/30 days [7].

[1] During 51 days of marine mammal monitoring at the Mukilteo Terminal during 2017–2018 construction (conducted under WSDOT's previous IHA), 1,525 harbor seals were observed for a an average of 30 seals per day.
[2] During 51 days of marine mammal monitoring at the Mukilteo Terminal during 2017–2018 construction (conducted under WSDOT's previous IHA), 707 California sea lions were observed for a an average of 14 sea lions per day.
[3] WSDOT estimates 1 Northern elephant seal may occur in the action area once per month.
[4] During 51 days of marine mammal monitoring at the Mukilteo Terminal during 2017–2018 construction (conducted under WSDOT's previous IHA), 16 transient killer whales observed for an average of 0.3 killer whales per day.
[5] These densities were derived for the Navy's Northwest Testing and Training Range Inland Waters (Navy, 2015).

[6] Density based on East Whidbey stratum, Table 17 in Smultea (2017).
[7] Average group size and sihting frequency based on CRC, 2017.

The rationale for the amount of take requested and proposed is as follows: For all estimates, we consider 76 days over seven months of pile driving. For density based estimates, the equation used is *density × area × number of pile driving days* summed across all piles types (Table 7) Because 24-in and 30-in piles have the same Level B harassment zone, we grouped these together. We also combined 78-in and 120-piles as they also have the same Level B harassment zone.

For harbor porpoise, we calculated take using the density identified in Table 6; however, this greatly exceeded expected take based on previous marine mammal monitoring efforts around the terminal (*e.g.,* WSDOT, 2018); therefore, we applied a 10 percent correction factor. For 24-in and 30-in piles: 0.75 × 66 km2 × 61 days (vibratory installation and removal) equals 3020 animals. For 36-in piles: 0.75 × 69 km2 × 2 days equals 104 animals. For 78-in and 120-in piles: 0.75 × 107km2 × 2 days = 161 animals. In total, we calculate 3,285 harbor porpoise could be taken. However, marine mammal monitoring conducted under the 2017 IHA yielded only 85 harbor porpoise sightings of which 28 were taken by harassment. Therefore, we are proposing to authorize 10 percent of the calculate take for a total of 329 harbor porpoise. We also calculated Level A takes of harbor porpoise for the four days vibratory driving 36-in through 120-in piles would occur and the 30 days of impact hammering 24-inch piles because vibratory driving 24-in piles does not produce a Level A harassment zone greater than the shut down zone and is very close to the pile (18.6 m). The resulting Level A harassment take is 12 harbor porpoise. We repeated this approach for Dall's porpoise and the Level B harassment take estimate approach for minke whales, humpback whales, gray whales, and Steller sea lions. We are not proposing Level A harassment take of the latter three species.

For estimates considering counts, we considered the following. Over 51 days of marine mammal monitoring during the 2017/18 Mukilteo project, 1,525 harbor seals were observed. During active pile driving, 499 Level B takes and 15 Level A takes (or 3 percent of authorized Level B takes of harbor seals) were recorded, approximately 34 percent of the number of animals observed. To be conservative, it is assumed that up to 75 percent of the seals observed may be taken under this IHA, or 21 seals per day × 76 days = 1,596. We are allocating five percent of that amount to Level A take which is slightly greater than the three percent documented under the 2017 IHA. Therefore, we propose to authorize 80 Level A harassment takes and 1516 Level B harassment takes for a total of 1,596 harbor seal takes. California sea lion takes considered 14 animals × 76 days for a total of 1,064 Level B harassment takes. We are not proposing to authorize Level A harassment because the Level A harassment zones are very small based on one to three hours of pile driving and no California sea lions were taken by Level A harassment under the 2017 IHA. Northern elephant seals are rare but we are proposing to authorize take, by Level B harassment only, of 7 individuals (one per month). Up to 23 positively identified transient killer whales may be taken (0.3 animals × 76 days; see mitigation on killer whale identification) while only 5 gray whales and 6 humpback whales (see Endangered Species Act section) are proposed to be taken. See Table 7 for all proposed take numbers, by species, and the respective amount of the population that take represents.

TABLE 7—REQUESTED TAKE AMOUNT, PER SPECIES, RELATIVE TO POPULATION SIZE

	Level A	Level B	Total take	% Population
Harbor seal	80	1,516	1,596	14.5
CSL	0	1,064	1,064	0.4
N. elephant seal	0	7	7	>0.01
Killer whale—transient	0	23	23	9.5
SSL	0	161	161	0.2
Gray whale	0	5	5	0.02
Humpback whale	0	6	6	0.3
Dall's porpoise	4	7	12	0.05
Harbor porpoise	12	329	341	3.04
Minke whale	0	7	8	1.3
Bottlenose dolphin	0	49	49	10.8
Long-beaked common dolphin	0	49	49	0.04

Description of Proposed Mitigation, Monitoring and Reporting Measures—A description of proposed mitigation, monitoring, and reporting measures is found in the previous documents, which are nearly identical in this proposed IHA. In summary, mitigation includes use of an unconfined bubble curtain (with operational standards set by the U.S. Fish and Wildlife Service) and soft start techniques during impact pile driving in greater than 2 ft of water, minimum 10 m shut down zone, and species-dependent shut down zones as described in Table 8. Some of these shut down zones fully encompass the Level A harassment zone; however, for species where we propose Level A take, this might not always be the case.

TABLE 8—SHUT-DOWN ZONES

Method	Pile size	Level A (meters)					Level B (m)
		LF	MF	HF	PH	OT	
Vibratory	24	35	10	50	20	10	8,000

TABLE 8—SHUT-DOWN ZONES—Continued

Method	Pile size	Level A (meters)					Level B (m)
		LF	MF	HF	PH	OT	
	30	105	10	150	60	.....	8,000
	36	170	20	200	.....	.....	8,690
	78	205	.....	.....	.....	.....	20,000
	120	130	.....	.....	.....	.....	.....
Impact	24	435	.....	.....	.....	20	1,585

Monitoring requirements would be similar to the 2017 IHA requirements (see an updated Marine Mammal Monitoring Plan available at *https://www.fisheries.noaa.gov/node/23111*). The number and location of Protected Species Observers (PSOs) is dependent upon activity and weather conditions and are as follows:

(i) Three land-based PSOs during impact driving of 24-in piles;

(ii) four land-based and one ferry-based PSOs during 24-, 30-, 36-in steel vibratory driving/removal;

(iii) five land-based and one ferry-based PSOs during 78- and 120-in steel vibratory driving/removal; and

(iv) two ferry-based PSOs in addition to land-based PSOs when weather conditions are poor.

In April, 2018, WSDOT submitted a monitoring report for construction that had been completed under the 2017 IHA. WSDOT complied with all mitigation, monitoring, and reporting protocols. Recorded takes were below the number authorized for the corresponding amount of work. The monitoring report can be viewed on NMFS's website at *https://www.fisheries.noaa.gov/node/23111.*

WSDOT will conduct acoustic monitoring during impact pile driving of 24-in piles per the acoustic monitoring plan submitted for the previous IHA. WSDOT will also conduct acoustic monitoring during vibratory driving 78-in and 120-in piles. Both the impact and vibratory acoustic monitoring plans are available at *https://www.fisheries.noaa.gov/node/23111.*

Preliminary Determinations

WSDOT proposes to conduct a subset of activities identical to those covered in the previous 2017 IHA. We have included take for three new species noting these are precautionary as these species are not common in the action area and these species were not observed during the project during previous construction. We also believe the potential behavioral reactions and effects on the cetacean species previously analyzed is applicable to these species, if not to some lesser extent due to lower probability of occurrence.

When issuing the 2017 IHA, NMFS found Phase 2 of the Mukilteo Multimodal Project, in its entirety, would have a negligible impact to species or stocks' rates of recruitment and survival and the amount of taking would be small relative to the population size of such species or stock (less than 15 percent). As described above, the number of estimated takes of the same stocks are less than takes authorized in the 2017 IHA and the anticipated impacts from the project are similar to those previously analyzed. The amount of take for the additional three species is also small (less than 11 percent of each stock). The proposed IHA includes identical required mitigation, monitoring, and reporting measures (albeit some minor modification to harassment and shutdown distances) as the 2017 IHA. In conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) WSDOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS 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. NMFS is proposing to authorize take of humpback whales from the Central American and Mexico DPSs, which are listed under the ESA.

The effects of this proposed Federal action were adequately analyzed in NMFS' Biological Opinion for the Mukilteo Multimodal Project, Snohomish, Washington, dated August 1, 2017, which concluded that issuance of an IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat. NMFS West Coast Region has confirmed the Incidental Take Statement issued in 2017 is applicable for the proposed IHA. That ITS authorizes the take of six humpback whales.

Proposed Authorization

As a result of these preliminary determinations, we are proposing to issue an IHA to WSDOT to conduct the specified activities at the Mukilteo Ferry Terminal from September 1, 2018, through August 31, 2019, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

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 Authorization is valid from September 1, 2018, through August 31, 2019.

2. This Authorization is valid only for activities associated with Phase 2 of the Mukilteo Multimodal Project, Puget Sound, Washington.

3. General Conditions.

(a) A copy of this IHA must be in the possession of WSDOT, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are found in Table 7.

(c) The taking, by Level A and B harassment only, is limited to the species listed in condition 3(b). See Table 7 for numbers of take authorized.

(d) The taking by serious injury or death of any of the species listed in condition 3(b) 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.

(e) WSDOT shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team, and WSDOT staff prior to the start of all pile driving, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

4. Mitigation.

(a) In-water construction work shall occur only during daylight hours during the established in-water work window (July 15 through February 15).

(b) For in-water heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

(c) Pre-activity monitoring shall take place from 30 minutes prior to initiation of pile driving activity and post-activity monitoring shall continue through 30 minutes post-completion of pile driving activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zones identified in Table 8.

(d) If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving activities at that location shall be halted or delayed, respectively. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone and 15 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

(e) WSDOT 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.

(f) WSDOT shall use a bubble curtain during impact driving of 24-in piles in greater than 2 feet of water. Should acoustic measurements identify that average source levels exceed those estimated for this activity (173 dB SEL, 193 dB rms), WSDOT shall contact NMFS Office of Protected Resources within 48 hours to determine if adjustments to harassment zones are warranted.

(g) For all pile activities, the number and location of Protected Species Observers (PSOs) is dependent upon activity and weather conditions and are as follows:

(i) three land-based PSOs during impact driving of 24-in piles;

(ii) four land-based and one ferry-based PSOs during 24-, 30-, 36-inch steel vibratory driving/removal;

(iii) five land-based and one ferry-based PSOs during 78- and 120-inch steel vibratory driving/removal; and

(iv) two ferry-based PSOs in addition to land-based PSOs when weather conditions are poor.

(h) Southern Resident Killer Whales (SRKW)

(i) If a killer whale approaches the monitoring zone during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW and WSDOT shall implement the shutdown measure identified in 4(k).

(ii) If a SRKW enters the monitoring zone undetected, WSDOT shall contact the Offices of Protected Resources within 24 hours to determine if additional monitoring is necessary to avoid future incidences.

(iii) Coordination with Local Marine Mammal Research Network—Prior to the start of pile driving, WSDOT will contact the Orca Network and/or Center for Whale Research to get real-time information on the presence or absence of whales before starting any pile driving. WSDOT will also monitor the Orca Network site for visual and acoustic detections.

(k) 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 Level B harassment zone for the pile size and method used (Table 8), pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or the observation time period, as indicated in 4(d) above, has elapsed.

5. Monitoring.

(a) Monitoring of pile driving shall be conducted by qualified PSOs (see below), who shall have no other assigned tasks during monitoring periods. WSDOT shall adhere to the following conditions when selecting observers:

(iv) Independent PSOs shall be used (*i.e.,* not construction personnel).

(ii) At least one PSO must have prior experience working as a marine mammal observer during construction activities.

(iii) Other PSOs may substitute education (degree in biological science or related field) or training for experience.

(iv) 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.

(v) WSDOT shall submit PSO CVs for approval by NMFS prior to the onset of pile driving.

(vi) WSDOT shall ensure that observers have the following additional qualifications:

(vii) Ability to conduct field observations and collect data according to assigned protocols.

(viii) Experience or training in the field identification of marine mammals, including the identification of behaviors.

(ix) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.

(x) 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.

(xi) 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.

(b) WSDOT shall conduct acoustic monitoring per their impact and vibratory monitoring plans. Acoustic monitoring shall be conducted early at the onset of pile work.

6. Reporting.

(a) WSDOT shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction

work or within 90 days of the expiration of the IHA, whichever comes first. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) If comments are received from NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

(c) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization (if issued), such as an injury, serious injury, or mortality, WSDOT shall immediately cease all operations and immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Status of all sound source use in the 24 hours preceding the incident;

(iv) Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, visibility, and water depth);

(v) Description of marine mammal observations in the 24 hours preceding the incident;

(vi) Species identification or description of the animal(s) involved;

(vii) Fate of the animal(s); and

(viii) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with WSDOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WSDOT may not resume their activities until notified by NMFS via letter, email, or telephone.

(d) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), WSDOT will immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WSDOT to determine whether modifications in the activities are appropriate.

(e) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), WSDOT shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators, within 24 hours of the discovery. WSDOT shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. WSDOT can continue its operations under such a case.

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 remaining work associated with the Mukilteo Multimodal Project. 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) A request for renewal is received no later than 60 days prior to expiration of the current IHA.

(b) The request for renewal must include the following:

(i) 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

(ii) 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.

(c) 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: June 25, 2018.

Elaine T. Saiz,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–13940 Filed 6–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board; Notice of Federal Advisory Committee Meeting

AGENCY: Chief Management Officer, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Innovation Board (DIB) will take place.

DATES: Open to the public Wednesday, July 11, 2018 from 2:30 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Defense Innovation Unit Experimental (DIUx) Auditorium, 230 RT Jones Road, Mountain View, CA 94043. Additionally, the meeting will be live streamed for those who are unable to physically attend the meeting.

FOR FURTHER INFORMATION CONTACT: Michael L. Gable, (571) 372–0933 (Voice), (Facsimile), *michael.l.gable.civ@mail.mil* (Email). Mailing address is Defense Innovation Board, 9010 Defense Pentagon, Room 5E572, Washington, DC 20301–9010. Website: *http://innovation.defense.gov.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense

Innovation Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on July 11, 2018, of the Defense Innovation Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. 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 and 102–3.150.

Purpose of the Meeting: The mission of the DIB is to examine and provide the Secretary of Defense and the Deputy Secretary of Defense independent advice and recommendations on innovative means to address future challenges in terms of integrated change to organizational structure and processes, business and functional concepts, and technology applications. The DIB focuses on (a) technology and capabilities, (b) practices and operations, and (c) people and culture.

Agenda: During the meeting, the DIB will deliberate on building innovation capacity among allies and partners, metrics for software development and acquisition programs from the Software Acquisition and Practices (SWAP) study, and development and deployment of emerging technologies within DoD. Mr. Joshua Marcuse, in his role as the Innovation Advisor to the Chief Management Officer, will brief the DIB on DoD's latest implementation activities related to DIB recommendations. Members of the public will have an opportunity to provide oral comments to the DIB regarding the DIB's deliberations and potential recommendations. See below for additional information on how to sign up to provide public comments.

Meeting Accessibility: Pursuant to Federal statutes and regulations (the FACA, the Sunshine Act, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 2:30 p.m. to 5:00 p.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting or wanting to receive a link to the live stream webcast should register on the DIB website, *http://innovation.defense.gov,* no later than July 6, 2018. Members of the media should RSVP to Lieutenant Colonel Mike Andrews, U.S. Air Force, Office of the Secretary of Defense Public Affairs, at *michael.r.andrews16.mil@mail.mil.*

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the DIB about its approved agenda pertaining to this meeting or at any time regarding the DIB's mission. Individuals submitting a written statement must submit their statement to the DFO (see **FOR FURTHER INFORMATION CONTACT** section for contact information). Written comments that do not pertain to a scheduled meeting may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at the planned meeting, then such comments must be received in writing not later than July 6, 2018. The DFO will compile all written submissions and provide them to DIB members for consideration.

Oral Presentations: Individuals wishing to make an oral statement to the DIB at the public meeting may be permitted to speak for up to two minutes. Anyone wishing to speak to the DIB should submit a request by email at *osd.innovation@mail.mil* not later than July 6, 2018 for planning. Requests for oral comments should include a copy or summary of planned remarks for archival purposes. Individuals may also be permitted to submit a comment request at the public meeting; however, depending on the number of individuals requesting to speak, the schedule may limit participation. Webcast attendees will be provided instructions with the live stream link if they wish to submit comments during the open meeting.

Dated: June 25, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–13919 Filed 6–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Statewide Family Engagement Centers

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2018 for the Statewide Family Engagement Centers (SFEC) program, Catalog of Federal Domestic Assistance (CFDA) number 84.310A.

DATES:

Applications Available: June 28, 2018.

Deadline for Notice of Intent to Apply: July 13, 2018.

Deadline for Transmittal of Applications: July 30, 2018.

Pre-Application Webinar Information: For information about the pre-application webinar, visit the SFEC website at: *https://innovation.ed.gov/statewide-family-engagement-centers-program/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003), and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: Jane Hodgdon, U.S. Department of Education, 400 Maryland Avenue SW, Room 4W248, Washington, DC 20202–5970. Telephone: (202) 453–6620. Email: *SFEC@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SFEC program is authorized under title IV, part E of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The purpose of the SFEC program is to provide financial support to organizations that provide technical assistance and training to State educational agencies (SEAs) and local educational agencies (LEAs) in the implementation and enhancement of systemic and effective family engagement policies, programs, and activities that lead to improvements in student development and academic achievement. The Secretary is authorized to award grants to statewide organizations (or consortia of such organizations) in partnership with an SEA to establish SFECs that (1) carry out parent education and family engagement in education programs, and (2) provide comprehensive training and technical assistance to SEAs, LEAs, schools identified by SEAs and LEAs, organizations that support family-school partnerships, and other such programs.

Background: The SFEC program seeks to promote high-impact cradle-to-career family, school, and community engagement by funding centers that build the capacity of all stakeholders—including families, SEAs, LEAs, school-level staff and personnel, and community based organizations—to engage in effective partnerships that support student achievement and school

improvement and increase the number of high-quality educational options available to families.

Family, school, and community engagement must be viewed as a shared responsibility among all parties, in order to be effective. The engagement should be continuous from birth to young adulthood and should take place wherever children learn—at home, in school, and in their community.

The Department's Dual Capacity-Building Framework for Family-School Partnerships [1] identifies several key conditions essential to the design of effective, high-impact activities and initiatives for building the capacity of families, SEAs, LEAs, and school staff to partner in ways that support student achievement and school improvement. These conditions highlight the fact that effective, high-impact activities are purposefully designed and linked to school and LEA achievement goals (*e.g.,* school readiness, student achievement, and school improvement).

The capacity building initiatives should be embedded into the support structures and processes at the SEA and LEA levels, including training, professional development, teaching and learning, curriculum, and community collaboration. These initiatives should also operate with adequate resources, including public-private partnerships, to ensure meaningful and effective strategies that have the power to impact student learning and achievement. Building on years of research and lessons learned from programs such as Parent Information Centers,[2] the high-impact family engagement envisioned in SFEC requires a focus on State and local policy, as well as initiatives designed to promote parental involvement (as defined in this notice) and other direct support for parents, families, and the organizations that serve them.

In this year's SFEC competition, the Department also seeks to build an evidence base for the program by providing incentives to applicants that propose: (1) Projects that are supported by evidence and (2) robust evaluations. Such projects would, if well-implemented, yield promising evidence (as defined in this notice). To this end, we include a competitive preference priority encouraging projects that are based on evidence, with a specific interest in providing families with evidence-based strategies for promoting literacy, an application requirement that requires applicants to submit a logic model as part of their applications, and a selection criterion that encourages applicants to further explain the conceptual framework outlined in the logic model. In addition, through our competitive preference priorities, we seek applications that propose to support families in making informed decisions about educational opportunities that will meet the unique needs of each student.

Priorities: This notice contains two competitive preference priorities. Under section 437(d)(1) of the General Education Provisions Act (GEPA), we are establishing Competitive Preference Priorities 1(a) and 2. Competitive Preference Priority 1(b) is from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities), published in the **Federal Register** on March 2, 2018 (83 FR 9096).

Competitive Preference Priorities: For FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional three points to an application that meets either Competitive Preference Priority 1(a) or Competitive Preference Priority 1(b), and we award up to an additional three points to an application depending on how well the application meets Competitive Preference Priority 2, for a maximum of six additional points under these priorities. The total possible points for each competitive preference priority are noted in parentheses.

These priorities are:

Competitive Preference Priority 1 (0 or 3 points).

The Secretary gives priority to projects that are designed to—

(a) Create SFECs that will provide direct services to parents and families through evidence-based (as defined in this notice) activities.

(b) Provide families with evidence-based (as defined in this notice) strategies for promoting literacy. This may include providing families with access to books or other physical or digital materials or content about how to support their child's reading development, or providing family literacy activities (as defined in section 203(9) of the Workforce Innovation and Opportunity Act).

Note: An application will not receive points for both (a) and (b) under Competitive Preference Priority 1.

Competitive Preference Priority 2 (up to 3 points).

The Secretary gives priority to projects that are designed to provide families with the information and tools they need to make important decisions regarding the educational choice (as defined in this notice) that is most appropriate for their children.

Application Requirements: The following requirements (a) (b), and (d)–(g) are from section 4503 of the ESEA. Under section 437(d)(1) of GEPA, we are establishing application requirements (c), (h), (i), and (j). For FY 2018, and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following application requirements apply. In order to receive funding, an applicant must include the following in its application:

(a) A description of the applicant's approach to family engagement in education.

(b) A description of how the SEA and any partner organization will support the SFEC that will be operated by the applicant including a description of the SEA's and any partner organization's commitment of such support.

(c) A description of the applicant's plan for building a statewide infrastructure for family engagement in education, that includes—

(1) Management and governance;

(2) Statewide leadership, including the development and implementation, in partnership with the SEA(s), of statewide family engagement in education policy and systemic initiatives that will provide for a continuum of services to remove barriers for family engagement in education and support school reform efforts as well as parental involvement policies under the ESEA; and

(3) Systemic services for family engagement in education, including assistance for effective participation by parents in their children's education in order to help their children meet challenging State academic standards, such as by assisting parents—

(i) To engage in activities that will improve student academic achievement, including understanding how parents can support learning in the classroom with activities at home and in after-school and extracurricular programs;

(ii) To communicate effectively with their children, teachers, school leaders, counselors, administrators, and other school personnel;

(iii) To become active participants in the development, implementation, and review of school-parent compacts, family engagement in education

[1] *See: www2.ed.gov/documents/family-community/partners-education.pdf.*

[2] Parent Information Centers program is one of the primary vehicles under the Individuals with Disabilities Education Act (IDEA) for providing information and training to parents of children with disabilities.

policies, and school planning and improvement;

(iv) To participate in the design and provision of assistance to students who are not making academic progress;

(v) To participate in State and local decision making;

(vi) To train other parents; and

(vii) In learning and using technology applied in their children's education;

(d) A description of the applicant's demonstrated experience in providing training, information, and support, to SEAs, LEAs, schools, educators, parents, and organizations on family engagement in education policies and practices that are effective for parents (including low-income parents) and families, parents of English learners, minorities, students with disabilities, homeless children and youth, children and youth in foster care, and migrant students, including evaluation results, reporting, or other data exhibiting such demonstrated experience.

(e) A description of the steps the applicant will take to target services to low-income students and parents.

(f) An assurance that the applicant will—

(1) Establish a special advisory committee, the membership of which includes—

(i) Parents, who shall constitute a majority of the members of the special advisory committee;

(ii) Representatives of education professionals with expertise in improving services for disadvantaged children;

(iii) Representatives of local elementary schools and secondary schools, including students;

(iv) Representatives of the business community; and

(v) Representatives of SEAs and LEAs;

(2) Use not less than 65 percent of the funds received under this part in each fiscal year to serve LEAs, schools, and community-based organizations that serve high concentrations of disadvantaged students, including students who are English language learners, minorities, students with disabilities, homeless children and youth, children and youth in foster care, and migrant students;

(3) Operate a SFEC of sufficient size, scope, and quality to ensure that the center is adequate to serve the SEA, LEAs, and community-based organizations;

(4) Ensure that the SFEC will retain staff with the requisite training and experience to serve parents in the State;

(5) Serve urban, suburban, and rural LEAs and schools;

(6) Work with—

(i) Other SFECs assisted under this part; and

(ii) Parent training and information centers and community parent resource centers assisted under sections 671 and 672 of the Individuals with Disabilities Education Act (20 U.S.C. 1471; 1472); and

(7) Use not less than 30 percent of the funds received under this competition for each fiscal year to establish or expand technical assistance for evidence-based (as defined in this notice) parent education programs;

(8) Provide assistance to SEAs, LEAs, and community-based organizations that support family members in supporting student achievement;

(9) Work with SEAs, LEAs, schools, educators, and parents to determine parental needs and the best means for delivery of services to address such needs;

(10) Conduct sufficient outreach to assist parents, including parents who the applicant may have a difficult time engaging with a school or LEA; and

(11) Conduct outreach to low-income students and parents, including low-income students and parents who are not proficient in English.

(g) An assurance that the applicant will conduct training programs in the community to improve adult literacy, including financial literacy.

(h) A description of how the applicant will meet program requirement (a) to obtain a non-Federal matching contribution in each fiscal year after the first fiscal year in which the project is funded.

(i) A preliminary memorandum of understanding (MOU), signed by each organization or agency with which it would partner in implementing the proposed SFEC, including the partner SEA(s), which details each partner's financial, programmatic, and long-term commitment with respect to the strategies described in the application.

(j) A logic model that identifies the key project components, explains how the key project components will lead to relevant outcomes, and informs the applicant's performance measures and project evaluation design.

Program Requirements: Program requirement (b) is from section 4504 of the ESEA. In addition, under section 437(d)(1) of the GEPA, we are establishing program requirements for a final MOU and that no SEA may partner with more than one SFEC grantee. We also are establishing a requirement for a minimum match. We note that section 4502(c) of the ESEA already requires grantees to obtain matching funds after the first year of the grant; in this notice we are establishing the specific minimum percentage of non-Federal contributions, which may be in cash or in-kind, that each grantee must secure in years two through five of the grant. For FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following program requirements apply.

(a) *Matching funds for grant renewal.*

Each grantee must contribute non-Federal matching funds or in-kind donations equal to at least 15 percent of its SFEC grant award in project years two through five.

(b) *Uses of funds.*

Each grantee shall use the grant funds, based on the needs determined under Application Requirement (f)(9), to provide training and technical assistance to SEAs, LEAs, and organizations that support family-school partnerships; and activities, services, and training for LEAs, school leaders, educators, and parents—

(1) To assist parents in participating effectively in their children's education and to help their children meet challenging State academic standards, such as by assisting parents—

(i) To engage in activities that will improve student academic achievement, including understanding how parents can support learning in the classroom with activities at home and in after-school and extracurricular programs;

(ii) To communicate effectively with their children, teachers, school leaders, counselors, administrators, and other school personnel;

(iii) To become active participants in the development, implementation, and review of school-parent compacts, family engagement in education policies, and school planning and improvement;

(iv) To participate in the design and provision of assistance to students who are not making academic progress;

(v) To participate in State and local decision making;

(vi) To train other parents; and

(vii) In learning and using technology applied in their children's education;

(2) To develop and implement, in partnership with the SEA, statewide family engagement in education policy and systemic initiatives that will provide a continuum of services to remove barriers for family engagement in education and support school reform efforts; and

(3) To develop and implement parental involvement policies under the ESEA.

(c) *Final MOU.*

Within the first 12 months of the project, each grantee must submit a final MOU, signed by each organization or agency with which it is partnering to implement the SFEC, including the

partner SEA(s), that details each partner's financial, programmatic, and long-term commitment.

(d) *SEA partnership.*

While each SFEC grantee must partner with at least one SEA, no SEA may partner with more than one SFEC grantee.

Definitions: For FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following definitions apply. The definitions of ''Local educational agency,'' ''Parental involvement,'' and ''State educational agency'' are from section 8101 of the ESEA (20 U.S.C. 7801). The definition of ''Educational choice'' is from the Supplemental Priorities. The definition of ''Evidence-based'' is from sections 4503(c) and 8101(21) of the ESEA. The definitions of ''Experimental study,'' ''Logic model,'' ''Performance measure,'' ''Performance target,'' ''Project,'' ''Project component,'' ''Promising evidence,'' ''Quasi-experimental design study,'' ''Relevant outcome,'' and ''What Works Clearinghouse Handbook'' are from 34 CFR 77.1. The definition of ''Family literacy activities'' is from section 203(9) of the Workforce Innovation and Opportunity Act. In addition, we are establishing a definition of ''Statewide organization'' under section 437(d)(1) of GEPA.

Educational choice means the opportunity for a child or student (or a family member on their behalf) to create a high-quality personalized path for learning that is consistent with applicable Federal, State, and local laws; is in an educational setting that best meets the child's or student's needs; and, where possible, incorporates evidence-based activities, strategies, or interventions. Opportunities made available to a student through a grant program are those that supplement what is provided by a student's geographically assigned school or the institution in which he or she is currently enrolled and may include one or more of the options listed below:

(1) Public educational programs or courses including those offered by traditional public schools, public charter schools, public magnet schools, public online education providers, or other public education providers.

(2) Private or home-based educational programs or courses including those offered by private schools, private online providers, private tutoring providers, community or faith-based organizations, or other private education providers.

(3) Internships, apprenticeships, or other programs offering access to learning in the workplace.

(4) Part-time coursework or career preparation, offered by a public or private provider in person or through the internet or another form of distance learning, that serves as a supplement to full-time enrollment at an educational institution, as a stand-alone program leading to a credential, or as a supplement to education received in a homeschool setting.

(5) Dual or concurrent enrollment programs or early college high schools (as defined in section 8101(15) and (17) of the ESEA), or other programs that enable secondary school students to begin earning credit toward a postsecondary degree or credential prior to high school graduation.

(6) Other educational services including credit-recovery, accelerated learning, or tutoring.

Evidence-based, for purposes of this notice, means an activity, strategy, or intervention that demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Family literacy activities means activities that are of sufficient intensity and quality, to make sustainable improvements in the economic prospects for a family and that better enable parents or family members to support their children's learning needs, and that integrate all of the following activities:

(a) Parent or family adult education and literacy activities that lead to readiness for postsecondary education or training, career advancement, and economic self-sufficiency.

(b) Interactive literacy activities between parents or family members and their children.

(c) Training for parents or family members regarding how to be the primary teacher for their children and full partners in the education of their children.

(d) An age-appropriate education to prepare children for success in school and life experiences.

Local educational agency (LEA) means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that

the school shall not be subject to the jurisdiction of any SEA other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State educational agency. The term includes the SEA in a State in which the SEA is the sole educational agency for all public schools.

Logic model (also referred to as theory of action) means a reasonable conceptual framework that identifies key components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Parental involvement means the participation of parents in regular, two-way, and meaningful communication involving student academic learning and other school activities, including ensuring—

(A) That parents play an integral role in assisting their child's learning;

(B) That parents are encouraged to be actively involved in their child's education at school;

(C) That parents are full partners in their child's education and are included, as appropriate, in decision-making and on advisory committees to assist in the education of their child; and

(D) The carrying out of other activities, such as those described in section 1116 of the ESEA.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project means the activity described in the application.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(a) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(b) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(c) A single study assessed by the Department, as appropriate, that—

(i) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(ii) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Relevant outcome means the student outcome(s) or other outcomes(s) the key project component is designed to improve, consistent with the specific goals of the program.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Statewide organization means a public or private organization that—

(1) Provides family engagement support or services;

(2) Demonstrates capacity to provide such support or services statewide to all States participating in its proposed project; and

(3) Is not an SEA or LEA.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed definitions and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under sections 4501–4506 of the ESEA, as amended by the Every Student Succeeds Act, and, therefore, qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, requirements and definitions under section 437(d)(1) of GEPA. These definitions and requirements will apply to the FY 2018 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: Sections 4501–4506 of the ESEA (20 U.S.C. 7241–46).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $9,700,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000–$1,000,000 per project year.

Maximum Award: We will not make an award exceeding $1,000,000 for a single project year.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Continued funding of a grant under this competition after the third year will

be contingent on the grantee's progress toward meeting the performance measures and targets identified in the application.

III. Eligibility Information

1. *Eligible Applicants:* Statewide organizations (or consortia of such organizations) in partnership with at least one SEA.

2. *Cost Sharing or Matching:* ESEA section 4502(c) requires that each grantee contribute non-Federal resources, which may be in cash or in-kind, towards its project for each fiscal year after the first fiscal year in which the project is funded by the Department. We are establishing a program requirement under section 437(d)(1) of GEPA that a grantee must obtain matching funds or in-kind donations equal to at least 15 percent of its grant award in project years two through five. Applicants must include a budget showing their matching contributions on an annual basis relative to the annual budget amount of SFEC grant funds in years two through five.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003), and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for SFEC, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make all successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2018.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the preliminary MOU, the logic model, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department of the applicant's intent to submit an application for funding by sending a short email message indicating the applicant's intent to submit an application for funding. The email need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This email notification should be sent to *SFEC@ed.gov* with ''INTENT TO APPLY'' in the subject line by July 13, 2018. Applicants that do not notify us of their intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

Points awarded under these selection criteria are in addition to any points an applicant earns under the competitive preference priorities in this notice.

The selection criteria are as follows:

A. *Quality of the Project Design* (up to 30 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers—

(1) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(2) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(3) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

B. *Quality of the Management Plan and Project Personnel* (up to 20 points).

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, in determining the quality of the management plan and project personnel, the Secretary considers—

(1) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(2) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(3) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(4) The qualifications, including relevant training and experience, of key project personnel.

C. *Adequacy of Resources* (up to 20 points).

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers—

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The extent to which the costs are reasonable in relation to the number of persons to be served and the anticipated results and benefits.

D. *Quality of the Project Evaluation* (up to 30 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers—

(1) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(2) The extent to which the evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(3) The extent to which methods of evaluation will, if well-implemented, produce promising evidence (as defined in 34 CFR 77.1(c)) about the project's effectiveness.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additionally, as stated in Program Requirement (d), no SEA may partner with more than one SFEC grantee. We will review applications scoring within the funding range to ensure that SEAs are represented on only one funded application. If changes are necessary to a highly ranked applicant's proposed SEA partners, such changes may constitute a change in the scope and objectives of the grant, which may result in an application not being selected for funding.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* As outlined in title IV, part E, section 4501 of the ESEA, SFEC is focused on using family engagement to improve student development and academic achievement. The program recognizes that in order to effectively and sustainably engage parents and families, grantees must use training and technical assistance to build capacity at the State and district levels to develop and implement policies, programs, and activities that are inclusive of families and lead to improvements in student development and academic achievement. SFECs must also provide direct support to parents, teachers, and others that strengthen the relationship between parents and their children's school, foster greater engagement, and assist them in meeting the educational needs of children. SFEC will coordinate its activities with activities conducted under section 1116 and other parts of the ESEA, as well as other Federal, State, and local services and programs.

Annual performance measures: (1) The number of parents who are participating in SFEC activities designed to provide them with the information necessary to understand their annual school report cards and other opportunities for engagement under section 1116 and other related ESEA provisions; (2) the number of high-impact activities or services provided to build a statewide infrastructure for systemic family engagement that includes support for SEA- and LEA-level leadership and capacity-building; (3) the number of high-impact activities or services implemented to ensure that parents are trained and can effectively engage in activities that will improve student academic achievement, to include an understanding of how they can support learning in the classroom with activities at home or outside the school generally, as well as how they can participate in State and local decision-making processes; and (4) the percentage of parents and families receiving SFEC services who report having enhanced capacity to work with schools and service providers effectively in meeting the academic and developmental needs of their children.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations 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: June 25, 2018.

James Blew,

Acting Assistant Deputy, Secretary for Innovation and Improvement.

[FR Doc. 2018–13913 Filed 6–27–18; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0008; FRL–9978–35]

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 July 30, 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: Michael Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov,* Anita Pease, Antimicrobials Division (AD) (7510P), main telephone number: (703) 305–7090; email address: *ADFRNotices@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.

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.

New Uses

1. *EPA Registration Number(s):* 100–1281 and 100–1254. *Docket ID number:* EPA–HQ–OPP–2017–0671. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Mandipropamid. *Product type:* Fungicide. *Proposed uses:* Asparagus bean, edible podded; Bean (Phaseolus spp.), edible podded; Bean (Vigna spp.), edible podded; Brassica, leafy greens, subgroup 4–16B; Catjang bean, edible podded; Celtuce; Chinese longbean, edible podded; Citrus, dried pulp; Citrus, oil; Cowpea, edible podded; Florence fennel; French bean, edible podded; Fruit, citrus, group 10–10; Garden bean, edible podded; Goa bean, edible podded; Green bean, edible podded; Guar bean, edible podded; Jackbean, edible podded; Kidney bean, edible podded; Kohlrabi; Lablab bean, edible podded; Leaf petiole vegetable subgroup 22B; Leafy greens subgroup 4–16A; Moth bean, edible podded; Mung bean, edible podded; Navy bean, edible podded; Rice bean, edible podded; Scarlet runner bean, edible podded; Snap bean, edible podded; Sword bean, edible podded; Urd bean, edible podded; Vegetable, brassica, head and stem, group 5–16; Vegetable soybean, edible podded; Velvet bean, edible podded; Wax bean, edible podded; Winged pea, edible podded; Yardlong bean, edible podded. *Contact:* RD.

2. *EPA Registration Number(s):* 264–1137 and 264–1169. *Docket ID number:* EPA–HQ–OPP–2018–0140. *Applicant:* Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Fluoxastrobin. *Product type:* Fungicide. *Proposed Use:* Cotton (seed treatment). *Contact:* RD.

3. *EPA Registration Number(s):* 352–834 and 352–836. *Docket ID number:* EPA–HQ–OPP–2017–0674. *Applicant:* E.I. DuPont de Nemours and Company, P.O. Box 30, Newark, DE 19714. *Active ingredient:* Penthiopyrad. *Product type:* Fungicide. *Proposed Use(s):* New use on Bushberry Subgroup 13–07B and Caneberry Subgroup, 13–07A; Expansion of use on canola, cotton seeds, and sunflower seed to Oilseed group 20; Conversion from 5B to Brassica leafy greens subgroup 4–16B; Conversion from group 12 to Fruit, stone, group 12–12; Conversion from group 4 to Leaf petiole vegetable subgroup 22B, celtuce, and florence fennel; Conversion from group 4 to Leafy greens subgroup 4–16A; Conversion from group 14 to Nut, tree, group 14–12; Conversion from subgroup 5A to Vegetable, brassica, head and stem group 5–16 and kohlrabi. *Contact:* RD.

4. *EPA Registration Number(s):* 7969–185, 7969–258, 7969–199, and 7969–251. *Docket ID number:* EPA–HQ–OPP–2017–0311. *Applicant:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709. *Active ingredient:* Pyraclostrobin. *Product type:* Fungicide. *Proposed Use(s):* Greenhouse use for commercially grown vegetables and production of transplants for the home consumer market on Vegetable, cucurbit, crop group 9; Vegetable, fruiting, crop group 8–10; and Leafy greens subgroup 4–16A; Crop group conversion from Brassica, head and stem, subgroup 5A to Vegetable, brassica head and stem, group 5–16 and kohlrabi; Crop group conversion from Brassica, leafy greens, subgroup 5B to Brassica, leafy greens, subgroup 4–16B; Crop group conversion from Vegetable, leafy, except brassica, group 4 to Leafy greens subgroup 4–16A and Leaf petiole vegetable subgroup 22B and celtuce and florence fennel. *Contact:* RD.

5. *EPA Registration Number(s):* 86203–1. *Docket ID number:* EPA–HQ–OPP–2017–0674. *Applicant:* Mitsui Chemicals Agro, Inc, P.O. Box 5126, Valdosta, GA 31603–5126. *Active ingredient:* Penthiopyrad. *Product type:* Fungicide. *Proposed Use(s):* New use on Bushberry Subgroup 13–07B and Caneberry Subgroup, 13–07A; Expansion of use on canola, cotton seeds, and sunflower seed to Oilseed group 20; Conversion from 5B to Brassica leafy greens subgroup 4–16B; Conversion from group 12 to Fruit, stone, group 12–12; Conversion from group 4 to Leaf petiole vegetable subgroup 22B, celtuce, and florence fennel; Conversion from group 4 to Leafy greens subgroup 4–16A; Conversion from group 14 to Nut, tree, group 14–12; Conversion from subgroup 5A to Vegetable, brassica, head and stem group 5–16 and kohlrabi. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 31, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–13947 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2017–0717; FRL–9979–14]

Certain New Chemical Substances; Receipt and Status Information for March 2018

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly

available and to publish information in the **Federal Register** pertaining to submissions under TSCA section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from March 1, 2018 to March 31, 2018.

DATES: Comments identified by the specific case number provided in this document must be received on or before July 30, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0717, and the specific case number for the chemical substance related to your comment, 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:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 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:

For technical information contact: Jim Rahai, Information Management Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from March 1, 2018 to March 31, 2018. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (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. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs received by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices received by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS RECEIVED FROM 3/1/2018 TO 3/31/2018

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–16–0509A	10	3/2/2018	CBI	(G) For packaging application	(G) Modified ethylene-vinyl alcohol copolymer.
P–17–0235A	3	3/28/2018	CBI	(G) Anti-agglomerate	(G) Amidoamino quaternary ammonium salt.
P–17–0288A	7	3/27/2018	SK Chemicals America, Inc.	(G) All-purpose packaging	(G) Carbomonocyclicdicarboxylic acid, polymer with cycloalkane(C=5~8) alkanol, alkanediol(C=1~5), 4-(hydroxymethyl)cyclohexyl]methyl 4-(hydroxymethyl)cyclohexanecarboxylate, substitutedalkanol(C=1~5) and 4,4′-[oxybis(methylene)]bis [cyclohexanemethanol].
P–17–0346A	5	03/19/2018	CBI	(G) Destructive use	(G) Triarylalkyl phosphonium halide salt.
P–17–0398A	5	3/30/2018	Nexus Fuels	(G) Wax-Component of complex formulations for various uses.	(G) Branched Cyclic and Linear Hydrocarbons from Plastic Depolymerization.
P–17–0399A	5	3/30/2018	Nexus Fuels	(G) Stock use	(G) Alkane, Alkene, Styrenic Compounds Derived from Plastic Depolymerization.
P–18–0104	2	03/01/2018	CBI	(S) Halogen free flame retardant in thermoplastic polymers.	(G) Heteroaromatic substituted alkanoic acid, [2, 2-bis [[(1-oxo-2-propen-1-yl)oxy]methyl]-1,3-propanediyl] ester, dioxide homopolymer.
P–18–0117	2	03/02/2018	Mane USA	(S) Fragrance to be put into a Fine Fragrance, Personal Care Products such as shampoo, body washes and lotions, Consumer Care Products such as laundry detergents, toilet bowl cleaners and air fresheners.	(S) Cyclopentaneacetonitrile, 2 , 4 , 4 -trimethyl -a-methylene-.
P–18–0117A	3	03/12/2018	Mane USA	(S) Fragrance to be put into a Fine Fragrance, Personal Care Products such as shampoo, body washes and lotions, Consumer Care Products such as laundry detergents, toilet bowl cleaners and air fresheners.	(S) Cyclopentaneacetonitrile, 2 , 4 , 4 -trimethyl -a-methylene-.
P–18–0122	2	03/01/2018	CBI	(G) Paper additive	(G) Alkylamide, polymer with alkylamine, formaldehyde, and polycyanamide, alkyl acid salt.
P–18–0123	1	03/02/2018	Duracell US Operation Inc.	(S) Chemical intermediate used in the production of a substance used in battery.	(G) Alkali nickel oxide.
P–18–0124	1	03/02/2018	Duracell US Operation Inc.	(S) Used in the production of battery electrodes.	(G) Alkali nickel oxide.
P–18–0125	1	03/07/2018	Noltex L.L.C	(G) Reagent in coating material	(G) Oxoalkylcarboxylic acid, sodium salt.
P–18–0126	1	03/09/2018	Ishihara Corporation (USA).	(S) Black pigment for architectural paint (e.g. roof and walls of buildings).	(S) Calcium manganese titanium oxide.
P–18–0127	1	03/12/2018	Takasago	(S) Fragrance in fine fragrance (S) Fragrance in household products (laundry detergent), (S) Fragrance in other consumer products, (S) Fragrance in shower gels and shampoos.	(S) Heptane, 2-methoxy-2-methyl-.

TABLE I—PMN/SNUN/MCANs RECEIVED FROM 3/1/2018 TO 3/31/2018—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–18–0128	1	03/12/2018	Cosun Biobased Products.	(G) Surface modifier	(S) Inulin, 2-hydroxy-3-(trimethylammonio)propyl ether, chloride.
P–18–0082A	3	03/12/2018	Cytec Industries Inc	(S) Isolated intermediate used in the manufacture of a surface-active agent.	(G) Aspartic acid, tallow modified diester.
P–18–0097A	2	03/12/2018	Mane USA	(S) Maderal is a fragrance that will be added to Personal Care Products, (S) Maderal is a fragrance that will be added to Consumer Care Products, (S) Maderal is a fragrance that will be added to Fine Fragrances.	(S) 1,3-Dioxane, 2-(3,3-dimethyl-1-cyclohexen-1-yl)-2,5,5-trimethly-.
P–18–0129	1	03/13/2018	CBI	(G) Intermediate used for chemical production	(S) 2,2-dimethyl-3-(3-methylphenyl)propanal,.
P–18–0129A	3	03/20/2018	CBI	(G) Intermediate used for chemical production	(S) Benzenepropanal, alpha, alpha, 3-trimethyl-.
P–18–0116A	2	03/13/2018	CBI	(G) Intermediate for industrial chemical	(G) Fatty acid oil reaction product with fatty acid oil.
P–18–0130	1	03/15/2018	Allnex USA Inc	(S) Adhesion promoter	(G) Substituted alkanediol, polymer with heteromonocycles, alkenoate, metal complexes.
P–18–0130A	3	03/30/2018	Allnex USA Inc	(S) Adhesion promoter	(G) Substituted alkanediol, polymer with heteromonocycles, alkenoate, metal complexes.
P–18–0131	1	03/16/2018	Coim USA Inc	(S) Polyester foam applications	(G) Soybean oil, polymer with mixed difunctional glycols, glycerol, melamine, phthalic anhydride, polyethylene glycol, and terephathalic acid.
P–18–0131A	2	03/27/2018	Coim USA Inc	(S) Polyester foam applications	(G) Soybean oil, polymer with mixed difunctional glycols, glycerol, melamine, phthalic anhydride, polyethylene glycol, and terephathalic acid.
P–18–0132	1	03/20/2018	Cabot Corporation	(S) Pigment dispersing aid	(G) Substituted benzene, 4-methoxy-2-nitro-5-[2-[(1e)-1-[[(2-methoxyphenyl)amino]carbonyl]-2-oxopropylidene]hydrazinyl]-, sodium salt (1:1).
P–18–0133	1	03/20/2018	CBI	(G) Component in hydraulic fracturing fluids	(G) Polyol adduct of bisaldehyde.
P–18–0134	1	03/21/2018	CBI	(G) Used for chemical production	(S) Benzene, 1-(chloromethyl)-3-methyl-.
P–18–0135	3	03/23/2018	CBI	(G) Ingredient for household products	(S) 1,2-decanediol.
P–17–0393A	3	03/22/2018	Allnex USA Inc	(G) Ultra violet (UV) Curable Coating Resin	(G) Alkanediamine, dialkyl-, polymer with a-hydro-w-[(1-oxo-2-propen-1-yl)oxy]poly(oxy-1,2-ethanediyl) ether with substituted alkyl-substitutedalkanediol, reaction products with alkyl-alkanamine.
P–18–0137	1	03/23/2018	Wacker Chemical Corporation.	(S) For improved water protection of construction materials, like cement fiber board.	(G) Alkylsilsesquioxane, ethoxy-terminated.
P–18–0138	1	03/26/2018	CBI	(S) Compounding, (S) Injection molding of special applications.	(G) Cyclo aromatic dicarboxylic acid, polymer with hexacyclo aromatic dicarboxylic acid, alkanediamine and dicycloalkanediamine.
P–18–0139	1	03/26/2018	Dayglo Color Corp	(G) Pigment for Paint	(G) Rare-earth substituted aluminum strontium oxide, doped.
P–18–0140	2	03/27/2018	AdvanSix Inc	(S) Export, (G) Agricultural solvent, (G) Solvent in coatings.	(G) Methyl modified lactam.
P–18–0141	2	03/27/2018	AdvanSix Inc	(G) Solvent in coatings, (S) Export, (G) Agricultural solvent.	(G) Ethyl modified lactam.
P–18–0142	1	03/27/2018	Allnex USA Inc	(S) Binder for Topcoat coating	(G) Alkanoic acid, alkyl-, alkyl ester, polymer with substituted alkenoates, alkenoic acid, alkyl peroxoate-initiated.
P–18–0027A	3	03/29/2018	CBI	(G) The polymer will be used as an additive in coatings.	(G) 2-Propenoic acid, 2-alkyl-, 2-(dialkylamino)alkyl ester, polymer with alpha-(2-alkyl-1-oxo-2-alken-1-yl)-omega-methoxypoly(oxy-1,2-alkanediyl).
P–18–0143	1	03/29/2018	Huntsman International LLC.	(S) Customers will further formulate the product containing the PMN substance to make a product that is used in Industrial applications as an anti-corrosive primer coating on metal, (S) Customers will further formulate the product containing the PMN substance to make a product that is used as a primer on concrete.	(G) Tofa polymer with amines.
P–18–0144	1	03/29/2018	CBI	(G) Coating	(G) Formaldehyde, polymer with an amine and phenol.
P–18–0145	2	03/30/2018	CBI	(S) Plastic coatings, (S) Parquet coatings, (S) Metal coatings, (S) Wood coatings, (S) Furniture coatings.	(G) Dialkanediol, polymer with 5-isocyanato-1-(isocyanatoalkyl)-1,3,3-trialkylcycloalkane, bis[n-[3-(trialkoxysilyl)alkyl]carbamate](ester).
P–18–0028A	2	3/30/2018	Nexus Fuels	(G) Blending stock	(G) Branched cyclic and linear hydrocarbons from plastic depolymerization.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC including

whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS RECEIVED FROM 3/1/2018 TO 3/31/2018

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–00–0546A	03/23/2018	08/15/2000	Substantiated CBI	(G) Alkyloxy-hydroxypropyl, trialkylamine, ammonium chloride.
P–12–0084	03/27/2018	02/15/2018		(G) Acrylic modified polyolefin.
P–12–0289	03/13/2018	01/26/2015		(G) Decanedioic acid, polymer with alcohol, isooctadecanoate.
P–12–0351	03/26/2018	03/22/2018		(G) Siloxanes and silicones, alkyl, alkyl propoxy ethyl, methyl octyl, alkyl polyfluorooctyl.
P–16–0278	03/01/2018	02/16/2018		(G) 2-(chloromethyl)oxirane and 4,4'-methylenebis[alkylphenol] polymer with diphenol, reaction products with 2-propenoic acid, 2-methyl-, ethenylbenzene, ethyl 2-propenoate and 2-(dimethylamino)ethanol.
P–16–0370	03/20/2018	02/28/2018		(G) Methoxy-terminated polysiloxane.
P–17–0153	03/19/2018	03/13/2018		(S) D-glucitol,1-deoxy-1-(dimethylamino)-.
P–17–0176	03/22/2018	02/21/2018		(G) Carbonic acid, alkyl carbomonocyclic ester,.
P–17–0283	03/15/2018	02/15/2018		(G) Arenesulfonic acid, alkyl derivatives, metal salts.
P–17–0337	03/06/2018	03/06/2018		(S) Aluminum boron cobalt lithium nickel oxide.
P–17–0338	03/06/2018	03/06/2018		(S) Aluminum boron cobalt lithium magnesium nickel oxide.

In Table III. of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information received by EPA during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 3/1/2018 TO 3/31/2018

Case No.	Received date	Type of test information	Chemical substance
J–18–0001	3/6/2018	Data validating microorganism inactivation	(G) Modified Corynebacterium glutamicum.
P–16–0593	3/16/2018	Acute Inhalation Toxicity Study of EP–730 in Rats (OECD 403 and OCSPP 870.1300).	(S) Carboxylic Acids, C_{6-18} and C_{5-15}-di-, polymers with diethylene glycol, glycerol, sorbitol and terephthalic acid.
P–16–0225	3/19/2018	Direct Peptide Reactivity Assay; KeratinoSens Study Report; DEREK Prediction Report; HRIPT Study Report..	(S) Isomer mixture of Cyclohexanol, 4-ethylidene-2-propoxy- (CAS 1631145–48–6) (35–45%) and Cyclohexanol, 5-ethylidene-2-propoxy (CAS 1631145–49–7) (45–55%).
P–15–0353	3/21/2018	Acute Toxicity to Zebra Fish (*Danio rerio)* in a 96-hour Screening Test (OECD 203); Acute Toxicity to *Daphnia magna* in a 48-hour Screening Test(OECD 202); and Anaerobic Biodegradation of Chlorinated Fatty Acid Methyl Esters in Sediment (OECD 311).	(G) Chlorinated Complex Ester.
P–18–0130	3/23/2018	Gel Permeation Chromatography Analysis	(G) Substituted alkanediol, polymer with heteromonocycles, alkenoate, metal complexes.
P–12–0351	3/26/2018	Analytical Report—Impurities	(G) Siloxanes and Silicones, alkyl, alkyl propoxy ethyl, methyl octyl, alkyl polyfluorooctyl.
P–13–0658	3/26/2018	Repeated Dose 90-day Inhalation Toxicity Study in Wistar Rats Dust Aerosol Exposure (OECD 413).	(G) Lithium Metal Phosphate.
P–16–0543	3/27/2018	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
SN–15–0009	3/29/2018	Fish Early Life Stage; Determination of Effects in Sediment on Emergence of the Midge, *Chironomus riparius;* and Analytical Method Validation in Sediment and Surface Water used in Chironomid Studies.	(G) Fatty Acid amide.
P–16–0577	3/29/2018	Two-Generation Reproduction and 90-day Toxicity Study in Rats by Dietary Administration.	(G) Alkyl Polyamine.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 19, 2018.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2018–13944 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2018–0081; FRL–9980–06–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123 (Renewal)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases under CERCLA Section 123 (EPA ICR Number 1425.11, OMB Control Number 2050–0077) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2018. Public comments were previously requested

via the **Federal Register** on March 16, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 30, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–SFUND–2018–0081 to (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, 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: Lisa Boynton, Office of Land and Emergency Management, Office of Emergency Management, (5104A) Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–2487; fax number: 202–564–8729; email address: *Boynton.Lisa@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 Agency requires applicants for reimbursement under this program authorized under Section 123 of CERCLA to submit an application that demonstrates consistency with program eligibility requirements. This is necessary to ensure proper use of the Superfund. EPA reviews the information to ensure compliance with all statutory and program requirements. The applicants are local governments who have incurred expenses, above and beyond their budgets, for hazardous substance response.

Form numbers: 9310–1.

Respondents/affected entities: Local Governments that apply for reimbursement under this program.

Respondent's obligation to respond: Required to obtain or retain a benefit (CERCLA Section 123).

Estimated number of respondents: 30 (per year).

Frequency of response: On occasion.

Total estimated burden: 270 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,995 (per year), which includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: None.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–13924 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0400; FRL–9979–46]

Lambda-Cyhalothrin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Washington State Department of Agriculture to use the pesticide lambda-cyhalothrin (CAS No. 91465–08–6) to treat up to 7,000 acres of asparagus to control the European asparagus aphid. The applicant proposes a use which is supported by the Interregional Research Project Number 4 (IR–4) program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before July 13, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0400, by one of the following methods:

- *Federal eRulemaking Portal: https://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 *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Washington State Department of Agriculture has requested the EPA Administrator to issue a specific exemption for the use of lambda-cyhalothrin on asparagus to control the European asparagus aphid. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that the cancellation of the previously relied-upon tool, disulfoton, has left asparagus growers in the state of Washington with no adequate alternatives to control the European asparagus aphid, and significant economic losses will occur without sufficient control. The Applicant proposes to make no more than 3 applications at a maximum rate of 0.03 pounds (lb.) (total of 0.09 lb.) per acre of lambda-cyhalothrin on up to 7,000 acres of asparagus grown in the state of Washington from June 15 to October 30, 2018. Treatment of the maximum acreage at the maximum rate would result in a total use of lambda-cyhalothrin of 630 lbs.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the Interregional Research Project Number 4 (IR–4) program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. Therefore, in accordance with the requirement at 40 CFR 166.24(a)(7), EPA is soliciting public comment before making the decision whether or not to grant the exemption. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Washington State Department of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 15, 2018.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2018–13946 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0348; FRL–9979–77–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Primary Aluminum Reduction Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR)—NESHAP for Primary Aluminum Reduction Plants (Renewal), EPA ICR No. 1767.08, OMB Control No. 2060–0360—to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2018. Public comments were previously requested via the **Federal Register** on June 29, 2017, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor 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 July 30, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0348, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@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 National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Aluminum Reduction Plants (40 CFR part 63, subpart LL) were proposed on September 26, 1996, promulgated on October 7, 1997, and most-recently amended on October 15, 2015. The 2015 amendment includes: (1) Polycyclic organic matter (POM) emission limits for new, existing and reconstructed prebake potlines; (2) revised POM limits for new, existing and reconstructed Soderberg potlines; (3) carbonyl sulfide (COS) emission limits for new, existing and reconstructed potlines; (4) POM emission limits for existing pitch storage tanks; (5) particulate matter (PM) emission limits for new, existing and reconstructed potlines, paste production plants and anode bake furnaces; (6) mercury (Hg) limits for new, existing and reconstructed anode bake furnaces;

(7) arsenic, nickel and polychlorinated biphenyl (PCB) limits for new, existing and reconstructed Soderberg potlines; (8) new work practice standards for anode bake furnaces, paste production plants and potlines; and (9) eliminates the exemptions for periods of startup, shutdown, and malfunctions (SSM). The amendment also reduces the testing frequency for total fluoride (TF) from prebake and Soderberg potlines and POM from Soderberg potlines from monthly to semiannually. These regulations apply to the following affected sources at a primary aluminum reduction plant are covered: Each new and existing pitch storage tank, potline, paste production plant and anode bake furnace that is located at a plant site that is a major source as defined at § 63.2 (except for anode bake furnaces that are not located on the same site as a primary aluminum reduction plant). New facilities include those that commenced construction or reconstruction after the date of proposal.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form numbers: None.

Respondents/affected entities: Primary aluminum reduction plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart LL).

Estimated number of respondents: 11 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 71,900 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,630,000 (per year), which includes $78,500 in either annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This decrease is primarily due to a program change. The 2015 amendment reduces the frequency of TF performance tests from monthly to semiannually. This ICR combines burden from the existing provisions with the burden associated with the 2015 amendment to the rule, resulting in a net decrease in burden. Additionally, there is an adjustment decrease because the total number of affected sources has decreased as compared to the most recently-approved ICR. There is an adjustment decrease in the total estimated capital and O&M costs as compared to the most recently approved ICR. This decrease occurred because there is a decrease in the total number of respondents subject to the rule.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–13922 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0323; FRL–9979–58–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Electric Arc Furnace Steelmaking Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR)—NESHAP for Electric Arc Furnace Steelmaking Facilities (Renewal), EPA ICR Number 2277.04, OMB Control Number 2060–0608—to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2018. Public comments were previously requested via the **Federal Register** on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor 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 July 30, 2018.

ADDRESSES: Submit your comments, referencing EPA–HQ–OECA–2013–0323, to: (1) EPA online using *www.regulations.gov* (our preferred method); or by email to *docket.oeca@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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@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 National Emission Standards for Hazardous Air Pollutants (NESHAP) for Area Sources: Electric Arc Furnace Steelmaking Facilities (40 CFR part 63, subpart YYYYY) apply to existing and new Electric Arc Furnace (EAF) steelmaking facilities that are area sources of hazardous air pollutants (HAP) emissions. The standards establish particulate matter (PM) emission limits for control devices and opacity limits for melt shops, pollution prevention requirements for ferrous scrap that is melted in EAFs, and monitoring, reporting, and recordkeeping requirements. New facilities include those that commenced construction or reconstruction after the date of proposal. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form numbers: None.

Respondents/affected entities: Owners or operators of electric arc furnace steelmaking facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YYYYY).

Estimated number of respondents: 91 (total).

Frequency of response: Initially, semiannually and occasionally.

Total estimated burden: 4,450 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $467,000 per year, which includes no annualized capital and/or operation & maintenance costs.

Changes in the estimates: There is an increase in burden hours and number of responses in this ICR compared to the previous ICR. This adjustment is due to (1) this ICR adjusts the number of affected sources subject to the rule based on the latest available data; (2) this ICR corrects the number of sources keeping records and entering information in record system, as well as the number of sources estimated to submit SSM reports; and (3) consistent with the Terms of Clearance, this ICR assumes all existing respondents will have to familiarize with the regulatory requirements each year.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–13923 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9979–45]

Access to Confidential Business Information by Industrial Economics Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Industrial Economics Incorporated of Cambridge, MA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than July 5, 2018.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. 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.

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–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

Under EPA contract number GS–10F–0061N, order number 68HEOH18F1498, contractor Industrial Economics Incorporated (IEI) of 2067 Massachusetts Ave, Suite 4, Cambridge, MA will assist the Office of Enforcement and Compliance Assurance (OECA) in preparing financial analysis of the firms, individuals, and organizations that are the subject of EPA enforcement actions taken under TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–10F–0061N, order number 68HEOH18F1498, IEI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. IEI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide IEI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters IEI's site located in Cambridge, MA, in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until March 31, 2023. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

IEI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 20, 2018.

Pamela S. Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2018–13945 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2018–0028; FRL–9979–95–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Contractor Conflicts of Interest (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Contractor Conflicts of Interest'' (EPA ICR No. 1550.11, OMB Control No. 2030–0023) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2018. Public comments were previously requested via the **Federal Register** on March 2, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not

required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 30, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OARM–2018–0028, to (1) EPA online using *www.regulations.gov* (our preferred method), *oei.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: Pamela Leftrict, Policy, Training, and Oversight Division, Acquisition Policy and Training Service Center (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–9463; email address: *leftrict.pamela@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: EPA contractors are required to disclose business relationships and corporate affiliations to determine whether EPA's interests are jeopardized by such relationships. Because EPA has the dual responsibility of cleanup and enforcement and because its contractors are often involved in both activities, it is imperative that contractors are free from conflicts of interest so as not to prejudice response and enforcement actions. Contractors are required to maintain a database of business relationships and report information to EPA on either an annual basis or when each work order is issued.

Form numbers: None.

Respondents/affected entities: Businesses or organizations performing contracts for the EPA.

Respondent's obligation to respond: Required to obtain or retain benefits.

Estimated number of respondents: 45.

Frequency of response: Annually and on occasion.

Total estimated burden: 56,055 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,139,627 (per year), which includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is a significant reduction in expected respondents (135 to 45), burden hours (164,525 to 50,055), and costs associated with this proposed renewal package compared to the ICR currently approved by OMB. These reductions are solely a result of corrections to the ICR's burden calculations; they are not a product of modifications to the collection methodology or the actual respondent universe.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–13921 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 13, 2018.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org*:

1. *Robert Ward Mullins II, Huntsville, Alabama, and Holly S. Mullins, Vinemont, Alabama;* to become members of the previously approved Mullins Family Control Group which controls FCB Bancshares, Inc., Cullman, Alabama, and thereby indirectly controls Premier Bank of the South, Good Hope, Alabama.

Board of Governors of the Federal Reserve System, June 25, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–13914 Filed 6–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0074]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; State Enforcement Notifications

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 July 30, 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 0910–0275. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *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.

State Enforcement Notifications

OMB Control Number 0910–0275—Extension

This information collection supports Agency regulations. Specifically, section 310(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 337(b)) authorizes a State to enforce certain sections of the FD&C Act in its own name and within its own jurisdiction. However, before doing so, a State must provide notice to FDA according to § 100.2 (21 CFR 100.2). The information required in a letter of notification under § 100.2(d) enables us to identify the food against which a State intends to take action and to advise that State whether Federal enforcement action against the food has been taken or is in process. With certain narrow exceptions, Federal enforcement action precludes State action under the FD&C Act.

In the **Federal Register** of February 7, 2018 (83 FR 5438), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment in support of the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part	Number of respondents	Number of responses per respondents	Total annual responses	Average burden per response	Total hours
21 CFR Section 100.2(d)	1	1	1	10	10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden for this information collection has not changed since the last OMB approval. The estimated reporting burden for § 100.2(d) is minimal because enforcement notifications are seldom used by States. During the last 3 years, we have not received any new enforcement notifications; therefore, we estimate that one or fewer notifications will be submitted annually. Although we have not received any new enforcement notifications in the last 3 years, we believe these information collection provisions should be extended to provide for the potential future need of a State government to submit enforcement notifications informing us when it intends to take enforcement action under the FD&C Act against a particular food located in the State.

Dated: June 21, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–13868 Filed 6–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Developmental Therapeutics.

Date: July 9, 2018.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6195D, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: June 22, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13894 Filed 6–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development of an Anti-Mesothelin Chimeric Antigen Receptor (CAR) for the Treatment of Human Cancer

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the U.S. Patents and Patent Applications listed in the Supplementary Information section of this notice to Atara Biotherapeutics Inc. (''Atara'') located in South San Francisco, CA.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before July 13, 2018 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Rose M. Freel, Ph.D., Licensing and Patenting Manager, NCI Technology Transfer Center, 8490 Progress Drive, Suite 400, Frederick, MD 21701; Telephone: (301)–624–8775; Facsimile: (240)–276–5504; Email: *rose.freel@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

United States Provisional Patent Application No. 61/040,005, filed March 27, 2008 and entitled ''Human Monoclonal Antibodies Specific for Mesothelin'' [HHS Reference No. E–079–2008/0–US–01];

PCT Patent Application PCT/US2009/038228, filed March 25, 2009 and entitled ''Human Monoclonal Antibody Against Mesothelin'' [HHS Reference No. E–079–2008/0–PCT–02]; and US Patent No. 8,357,783, filed September 22, 2010, Issued January 22, 2013 and entitled ''Human Anti-Mesothelin Monoclonal Antibodies'' [HHS Reference No. E–079–2008/0–US–06].

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to: ''The development of a mesothelin chimeric antigen receptor (CAR)-based immunotherapy using autologous or allogeneic T cells either transduced with a retroviral vector (including lentiviral vectors) or modified using a gene-editing technology, wherein the vector expresses a CAR comprising:

(1) Single antigen specificity for binding to mesothelin, and

(2) at least (a) the complementary determining region (CDR) sequences of the anti-mesothelin antibody known as m912, and (b) a T cell signaling domain; for the prophylaxis and treatment of mesothelin-expressing human cancers.''

This technology discloses a monoclonal antibody and methods of using the antibody for the treatment of mesothelin-expressing cancers, including mesothelioma, lung cancer, stomach/gastric cancer, ovarian cancer, and pancreatic cancer. The specific antibody covered by this technology is designated as m912, which is a fully human monoclonal antibody against mesothelin.

Mesothelin is a cell surface antigen that is preferentially expressed on certain types of cancer. The m912 antibody selectively binds to the mesothelin on the surface of cancer cells and induces cell death of those cancer cells while leaving healthy cells unharmed. This selectivity may lead to fewer side effects due to decreased non-specific killing of cells.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 21, 2018

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2018–13893 Filed 6–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Interagency Pain Research Coordinating Committee, July 09, 2018, 02:00 p.m. to July 09, 2018, 04:00 p.m., National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD, 20892 which was published in the **Federal Register** on May 18, 2018, 83 FR 23283.

The meeting notice is amended to change the time of the meeting from 2–4 p.m. to 4–6 p.m. Date has not changed. The meeting is open to the public.

Dated: June 22, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–13895 Filed 6–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meetings

AGENCY: Substance Abuse and Mental Health Services Administration; Centers for Disease Control and Prevention; Department of Health and Human Services.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given of the meetings on July 22–23, 2018, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Tribal Technical Advisory Committee (TTAC); on July 23 and July 25, 2018, of the Centers for Disease Control and Prevention (CDC)/Agency for Toxic Substances and Disease Registry (ATSDR) Tribal Advisory Committee (TAC); and on July 24, 2018, of the Joint Tribal Advisory Committee (JTAC).

DATES:

SAMHSA TTAC

July 22, 2018, 1:00 p.m. to 5:00 p.m. EDT (OPEN)

July 23, 2018, 9:00 a.m. to 5:00 p.m. EDT (OPEN)

- CDC/ATSDR TAC

July 23, 2018, 8:00 a.m. to 6:00 p.m. EDT (OPEN)

July 25, 2018, 8:00 a.m. to 12:00 p.m. EDT (OPEN)

- JTAC

July 24, 2018, 1:00 p.m. to 5:00 p.m. EDT, (OPEN)

ADDRESSES:

- SAMHSA TTAC
  Marriott Wardman Park Hotel, 2660 Woodley Road NW, Washington, DC 20008
- CDC/ATSDR TAC
  HHS Headquarters, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201
- JTAC
  HHS Headquarters, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT:

TTAC and JTAC, Mirtha Beadle, MPA, Director, Office of Tribal Affairs and Policy, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (240) 276–0641, Email: *otap@samhsa.hhs.gov*.

CDC/ATSDR/TAC, Carmen Clelland, PharmD, MPA, MPH, Associate Director for Tribal Support, Office for State, Tribal, Local and Territorial Support, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop E–70, Atlanta, GA 30341–3717, Telephone: (404) 498–2205, Email: *cclelland@cdc.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Presidential Executive Order 13175 signed on November 6, 2000 and the Presidential Memorandum of September 23, 2004, SAMHSA established the

TTAC to provide a complementary venue wherein tribal leaders and SAMHSA officials exchange information about public health issues in Indian Country; identify urgent mental health and substance abuse needs in tribal communities; and discuss collaborative approaches for addressing issues and needs. The SAMHSA TTAC serves as a national advisory body to SAMHSA.

The TTAC meeting will include updates and discussion related to tribal priorities for SAMHSA; collaborative opportunities between SAMHSA and CDC/ATSDR; behavioral health policy, budget, and legislative activities; tribal input in response to recent consultation and listening sessions; and essential coordination with other SAMHSA and HHS efforts to improve tribal behavioral health and wellness.

The purpose of the CDC/ATSDR TAC meeting is to advance CDC and ATSDR support for and partnership with American Indian and Alaska Native (AI/AN) tribes, and to improve the health of tribes by pursuing goals that include assisting in eliminating the health disparities faced by tribes; ensuring that access to critical health and human services is maximized to advance or enhance the social, physical, and economic status of AI/AN people; and promoting health equity for all AI/AN people.

The CDC/ATSDR TAC agenda will include discussions on tribal priorities for CDC and ATSDR, public health capacity in Indian Country, AI/AN health concerns, CDC and ATSDR budget and funding opportunities, and programmatic highlights from the agencies. Agenda items are subject to change as priorities dictate. All tribal leaders are encouraged to submit written testimony for the CDC/ATSDR TAC by 5:00 p.m. EDT Friday, July 15, 2018, to Captain Carmen Clelland, Associate Director of Tribal Support, OSTLTS, via mail to 4770 Buford Highway NE, MS E–70, Atlanta, GA, 30341–3717, or email *TribalSupport@cdc.gov.* Tribal leaders can find guidance to assist in developing tribal testimony for CDC and ATSDR at *www.cdc.gov/tribal/consultation.*

The TTAC and JTAC meetings are open to the public. Interested persons may submit data, information, or views on issues pending before the TTAC or JTAC in writing. The designated SAMHSA contact official must receive TTAC and JTAC submissions no later than July 15, 2018. Individuals interested in making public comments during the TTAC meeting must notify the designated SAMHSA contact official by July 15, 2018. Time is available for public comments at the end of the TTAC meeting on July 23 (two minutes will be allotted for each public comment). Oral comments will not be scheduled for the JTAC meeting.

The TTAC and JTAC meetings are accessible via web conferencing. To attend on site, obtain web conferencing information, submit written comments, provide brief oral comments (TTAC only), or request special accommodations for persons with disabilities, please register online at: *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or submit information for Mirtha Beadle, Director, Office of Tribal Affairs and Policy, SAMHSA, at *otap@samhsa.hhs.gov.*

SAMHSA and CDC are publishing their committee meeting notices together as CDC/ATSDR TAC members will join the SAMHSA TTAC for a collaborative discussion on July 22. Further, based on recommendations from tribal leaders, a JTAC meeting has been scheduled to discuss issues of common concern across the SAMHSA TTAC, CDC/ATSDR TAC, Indian Health Service (IHS) National Tribal Advisory Committee on Behavioral Health, and other U.S. Department of Health and Human Services (HHS) operating division tribal advisory committees. The intent of the JTAC meeting is to improve coordination across shared TAC topics to strengthen tribal health. The topics for JTAC discussion include improving data on American Indian and Alaska Native Health and the tribal health workforce (*i.e.,* primary care, behavioral health, public health, research, etc.).

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2018–13878 Filed 6–27–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1832]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. 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). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before September 26, 2018.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables 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.

You may submit comments, identified by Docket No. FEMA–B–1832, to 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.*

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: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed 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. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. 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.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Ada County, Idaho and Incorporated Areas	
Project: 11–10–0399S Preliminary Dates: September 23, 2016 and March 14, 2018	
City of Eagle	City Hall, 660 East Civic Lane, Eagle, ID 83616.
City of Meridian	Public Works Department, 33 East Broadway Avenue, Suite 200, Meridian, ID 83642.
City of Star	City Hall, 10769 West State Street, Star, ID 83669.
Unincorporated Areas of Ada County	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.
Niagara County, New York (All Jurisdictions)	
Project: 17–02–0294S Preliminary Date: December 13, 2017	
City of Niagara Falls	City Hall, 745 Main Street, Niagara Falls, NY 14301.
City of North Tonawanda	City Hall, 216 Payne Avenue, North Tonawanda, NY 14120.
Town of Lewiston	Town Hall, 1375 Ridge Road, Lewiston, NY 14092.
Town of Newfane	Town Hall, 2737 Main Street, Newfane, NY 14108.
Town of Porter	Porter Town Hall, 3265 Creek Road, Youngstown, NY 14174.
Town of Somerset	Somerset Town Hall, 8700 Haight Road, Barker, NY 14012.
Town of Wheatfield	Town Hall, 2800 Church Road, Wheatfield, NY 14120.
Town of Wilson	Town Hall, 375 Lake Street, Wilson, NY 14172.
Village of Lewiston	Village Hall, 145 North 4th Street, Lewiston, NY 14092.
Village of Wilson	Wilson Town Hall, 375 Lake Street, Wilson, NY 14172.
Village of Youngstown	Village Hall, 240 Lockport Street, Youngstown, NY 14174.

[FR Doc. 2018–13880 Filed 6–27–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1835]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and

where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. 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). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before September 26, 2018.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables 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.

You may submit comments, identified by Docket No. FEMA–B–1835, to 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.*

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: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed 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. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. 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.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Richmond County, Georgia and Incorporated Areas	
Project: 16–04–5708S Preliminary Date: September 15, 2017	
City of Augusta	Planning and Development Department, 535 Telfair Street, Suite 300, Augusta, GA 30901.
City of Blythe	City of Blythe Planning and Development Department, 535 Telfair Street, Suite 300, Augusta, GA 30901.
City of Hephzibah	City of Hephzibah Planning and Development Department, 535 Telfair Street, Suite 300, Augusta, GA 30901.
Hancock County, Mississippi and Incorporated Areas	
Project: 13–04–3757S Preliminary Date: February 29, 2016	
Unincorporated Areas of Hancock County	Hancock County Government Annex Building, 854 Highway 90, Suite A, Bay St. Louis, MS 39520.

Community	Community map repository address
Lamar County, Mississippi and Incorporated Areas	
Project: 13–04–3757S Preliminary Date: March 28, 2016	
Unincorporated Areas of Lamar County	Lamar County Courthouse, 403 Main Street, Purvis, MS 39475.
Marion County, Mississippi and Incorporated Areas	
Project: 13–04–3757S Preliminary Date: March 28, 2016	
City of Columbia	City Hall, 201 2nd Street, Columbia, MS 39429.
Unincorporated Areas of Marion County	217 Broad Street, Columbia, MS 39429.
Pearl River County, Mississippi and Incorporated Areas	
Project: 13–04–3757S Preliminary Date: February 29, 2016	
City of Picayune	Intermodal and Tourist Center, 200 Highway 11 South, Picayune, MS 39466.
Unincorporated Areas of Pearl River	Pearl River County Planning and Development Department, 402 South Main Street, Poplarville, MS 39470.
Walthall County, Mississippi and Incorporated Areas	
Project: 13–04–3757S Preliminary Date: March 28, 2016	
Unincorporated Areas of Walthall County	Walthall County Courthouse, 200 Ball Avenue, Suite B, Tylertown, MS 39667.

[FR Doc. 2018–13881 Filed 6–27–18; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[DHS Docket No. ICEB–2015–0003]

RIN 1653–ZA14

Extension of Employment Authorization for Nepali F–1 Nonimmigrant Students Experiencing Severe Economic Hardship Relating to the April 25, 2015 Earthquake in the Federal Democratic Republic of Nepal

AGENCY: U.S. Immigration and Customs Enforcement (ICE), DHS.

ACTION: Notice.

SUMMARY: This notice informs the public of the extension of suspension of certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is the Federal Democratic Republic of Nepal (Nepal) in order to avoid severe economic hardship that otherwise would result from the immediate, abrupt cessation of the temporarily suspended regulatory requirements governing on-campus and off-campus employment previously afforded due to the damage caused by the earthquake in Nepal on April 25, 2015. An earlier notice suspended these requirements for eligible Nepali F–1 nonimmigrant students. This notice extends eligibility for relief afforded under that earlier notice. Qualified students will continue to be allowed to apply for employment authorization and work an increased number of hours while school is in session provided that they satisfy the minimum course load requirement, while continuing to maintain their F–1 student status until June 24, 2019.

DATES: This F–1 notice is effective June 28, 2018 and will remain in effect through June 24, 2019.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; (703) 603–3400. This is not a toll-free number. Program information can be found at *http://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary of Homeland Security is exercising her authority under 8 CFR 214.2(f)(9) to extend the temporary suspension of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Nepal in order to avoid severe economic hardship that otherwise would result from the immediate, abrupt cessation of the temporarily suspended regulatory requirements governing on-campus and off-campus employment previously afforded due to the damage caused by the earthquake in Nepal on April 25, 2015. *See* 80 FR 69237 (Nov. 9, 2015). The original notice was effective from November 9, 2015 until December 24, 2016. A subsequent notice provided for an 18-month extension from December 27, 2016 through June 24, 2018. *See* 81 FR 95161 (Dec. 27, 2016). Effective with this publication, suspension of the requirements for qualifying students is extended from June 28, 2018 through June 24, 2019, after which the extension expires.

The Secretary's decision to temporarily extend the suspension of certain requirements takes into account the factors that led to her decision to terminate Temporary Protected Status (TPS), as detailed below. The Secretary has determined that conditions in Nepal no longer support TPS designation. To provide for an orderly transition regarding TPS, the Secretary is terminating that designation effective at 11:59 p.m., local time, on June 24, 2019. *See* 83 FR 23705 (May 22, 2018).

For reasons that are similar to those leading to the decision to terminate Nepal's TPS designation, the Secretary is unlikely to further extend the suspension of the requirements governing on-campus and off-campus employment for F–1 nonimmigrant students who are experiencing severe economic hardship (8 CFR 214.2(f)(9)) after June 24, 2019. *DHS strongly advises individuals who would be impacted by such decision to take steps to prepare themselves for that*

eventuality, including by establishing alternative means of financial support.

During the time period that this notice is effective, F–1 nonimmigrant students granted employment authorization through the notice will continue to be deemed to be engaged in a ''full course of study'' for the duration of their employment authorization provided they satisfy the minimum course load requirement described in 80 FR 69237. *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered under this action?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions: (1) Are citizens of Nepal; (2) were lawfully present in the United States in F–1 nonimmigrant status on April 25, 2015, under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i); (3) are enrolled in a school that is Student and Exchange Visitor Program (SEVP)-certified for enrollment of F–1 students; (4) are currently maintaining F–1 status; (5) require employment pursuant to this notice to avoid severe economic hardship that otherwise would result from the immediate, abrupt cessation of the temporarily suspended regulatory requirements governing on-campus and off-campus employment previously afforded due to the damage caused by the earthquake in Nepal of April 25, 2015; and (6) were issued employment authorization or obtained other student relief (*i.e.,* were permitted to work an increased number of hours while school was in session and/or reduce their course load while continuing to maintain F–1 student status) by June 24, 2018, on account of experiencing severe economic hardship as a direct result of the earthquake in Nepal on April 25, 2015.

As of April 26, 2018, DHS estimates that there are approximately 15,388 Nepali F–1 nonimmigrant students enrolled in schools in the United States. This notice applies to both undergraduate and graduate students, as well as elementary school, middle school, and high school students. The notice, however, applies differently to elementary school, middle school, and high school students (see the discussion published at 80 FR 69239 in the question, ''Does this notice apply to elementary school, middle school, and high school students in F–1 status?'').

F–1 students covered by this notice who transfer to other academic institutions that are SEVP-certified for enrollment of F–1 students remain eligible for the relief provided by means of this notice during the time period that this notice is effective.

Why is DHS taking this action?

The Department of Homeland Security (DHS) took action to provide temporary relief to F–1 nonimmigrant students whose country of citizenship is Nepal and who experienced severe economic hardship as a direct result of the earthquake in Nepal in April 2015. *See* 80 FR 69237. It enabled these F–1 students to obtain employment authorization, work an increased number of hours while school was in session, and reduce their course load while continuing to maintain their F–1 student status.

DHS has reviewed conditions in Nepal. Based on the review, the Secretary has determined that the circumstances supporting Nepal's 2015 relief for emergent circumstances directly resulting from the magnitude 7.8 earthquake that occurred on April 25, 2015 no longer exist as of the date of this notice. DHS has determined, however, that emergent circumstances justify extending until June 24, 2019, the effective date of the suspension of the requirements for the F–1 students who meet the aforementioned criteria because an immediate, abrupt cessation of the temporarily suspended regulatory requirements governing on-campus and off-campus employment could precipitate severe hardship for these students.

Nepal has made considerable progress in post-earthquake recovery and reconstruction, and conditions in Nepal have significantly improved since the country's last F–1 student temporary relief extension in 2016. The substantial disruption to living conditions has subsided for many of the Nepalese impacted by the earthquake. The number of citizens with access to clean water and sanitation has significantly increased, and reconstruction of thousands of homes has been completed or is underway. Schools and hospitals are functioning, and roads are being rebuilt. Additionally, government ministries and agencies are functioning at pre-earthquake levels, and the Government of Nepal is no longer temporarily unable to handle adequately the return of its nationals. *See Termination of the Designation of Nepal for Temporary Protected Status,* 83 FR 23705 (May 22, 2018).

Nepal has received a significant amount of international aid to assist in earthquake recovery efforts, which enabled the completion of many reconstruction projects and will support ongoing reconstruction for years to come. Nepal has made good progress in housing reconstruction, with slightly more than one in seven homes destroyed having been rebuilt, and more than half of homes under construction. For the most part, schools and health facilities have resumed operating at pre-earthquake levels. Nationwide, only 11 percent of schools and less than 9 percent of health facilities remain impacted by earthquake damage. Access to clean water has returned to pre-earthquake levels, and there has been a gradual improvement in food security in areas most affected by the earthquake. In areas still waiting for community water systems to be rebuilt, communities have access to clean water from other sources. All national- and most subnational-level infrastructure damaged by the earthquake has been retrofitted or rebuilt.

Thousands of Nepalese return annually to Nepal after working abroad, and the government has been able to accommodate the return of these citizens. In addition to receiving its returning nationals, Nepal is welcoming tourists, who are visiting Nepal at higher rates than before the earthquake.

Given these developments, DHS finds that the previously existing need for eligible Nepali F–1 students to work an increased number of hours beyond those generally allowed under regulatory requirements to meet their basic living requirements no longer exists as a direct consequence of the earthquake. However, the Secretary recognizes that an immediate, abrupt cessation to the suspension of regulatory requirements may precipitate significant economic harm for students from Nepal who currently rely on the employment authorization issued or other student relief obtained pursuant to the temporarily suspended regulatory requirements. The Secretary has determined that these separate emergent circumstances justify a further extension of the suspension, and anticipates that an extension for an additional year will provide sufficient time to mitigate these reliance interests. Extending the suspension of regulatory requirements for the temporary period noted above will provide students with employment authorization for a limited period if they can establish significant economic hardship resulting from the emergent circumstances, and will allow them time to establish alternative means of financial support after the suspended requirements expire.

How do I apply for employment authorization under the circumstances of this notice?

F–1 nonimmigrant students whose country of citizenship is Nepal who were lawfully present in the United States on April 25, 2015, meet the

eligibility requirements above, and would experience severe economic hardship for reasons described above may apply for employment authorization under the otherwise applicable guidelines described in 80 FR 69237. However, an F–1 student seeking employment authorization due to severe economic hardship, in applying for such authorization based upon the separate emergent circumstances as determined by the Secretary as described above in this notice, must demonstrate to the Designated School Official (DSO) that the hardship would be precipitated by a cessation of previously authorized employment. For an F–1 student seeking off-campus employment authorization, in making the recommendation that the student be approved for such employment, the DSO, in addition to certifying the otherwise applicable information, will certify the student is a citizen of Nepal and requires employment pursuant to this notice to avoid severe economic hardship that otherwise would result from the immediate, abrupt cessation of the temporarily suspended regulatory requirements governing the employment that the student was previously afforded due to the damage caused by the earthquake in Nepal of April 25, 2015.

This notice extends the time period during which such F–1 students may seek employment authorization. All interested F–1 students should follow the otherwise applicable instructions listed in the original notice.

Kirstjen M. Nielsen,

Secretary.

[FR Doc. 2018–13964 Filed 6–27–18; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–25749;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 June 2, 2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by July 13, 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 June 2, 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

Los Angeles County

Brown Beret Headquarters (Chicano Moratorium in Los Angeles County MPS), 2639–41 E 4th St., East Los Angeles, MP100002654.

Chicano Moratorium March December 20, 1969 (Chicano Moratorium in Los Angeles County MPS), Five Points Memorial, N Indiana St., Michigan Ave., Obregon Park, East Los Angeles, MP100002655.

El Barrio Free Clinic (Chicano Moratorium in Los Angeles County MPS), 5012 E Whittier Blvd., Los Angeles, MP100002656.

National Chicano Moratorium March August 29, 1970 (Chicano Moratorium in Los Angeles County MPS), Belvedere & Salazar Parks, Mednik & Atlantic Aves., E 3rd St., Beverly & Whittier Blvds., East Los Angeles, MP100002657.

DELAWARE

Sussex County

Godwin School, 23235 Godwin School Rd., Millsboro, SG100002658.

NEBRASKA

Cherry County

County Line Bridge (Highway Bridges in Nebraska MPS), Private Rd. over Niobrara R., Valentine vicinity, MP100002660.

Douglas County

Drummond Motor Company (Lincoln Highway in Nebraska MPS), 2600 Farnam St., Omaha, MP100002661.

Firestone Tire and Rubber Building (Lincoln Highway in Nebraska MPS), 2570 Farnam St., Omaha, MP100002663.

Holt County

O'Neill Carnegie Library (Carnegie Libraries in Nebraska MPS AD), 601 E Douglas St., O'Neill, MP100002665.

NEW YORK

Madison County

Oneida Downtown Commercial Historic District, Broad, Main & Cedar Sts., S of Elm, N of Washington, Oneida, SG100002667.

Oneida County

Downtown Genessee Street Historic District, Various, Utica, SG100002668.

WISCONSIN

Pierce County

Glen Park Suspension Footbridge, End of W Cascade Ave., across the South Fork Kinnickkinnic R., River Falls, SG100002671.

A request for the following resource:

NORTH DAKOTA

Morton County

State Training School Historic District, Heart R., W bank, 0.5 mi. S of W Main St., on W edge of Mandan, Mandan vicinity, OT95001549.

Additional documentation has been received for the following resources:

ARIZONA

Maricopa County

Silk Stocking Neighborhood Historic District, 290 N Washington St., Chandler, AD11000567.

Pima County

Blenman—Elm Historic District, 2401 E Elm St., Tucson, AD03000318.

ARKANSAS

Garland County

Ouachita Avenue Historic District, Bounded by Ouachita Ave., Orange St., Central Ave. & Olive St., Hot Springs, AD11000690.

NEBRASKA

Douglas County

Fairacres Historic District, Roughly bounded by Fairacres Rd., Dodge, N 62nd, California & N 68th Sts., Omaha, AD100001353.

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

NEBRASKA

Hall County

Grand Island VA Hospital (United States Third Generation Veterans Hospitals, 1946–1958 MPS), 2201 N Broadwell Ave., Grand Island, MP100002664.

Authority: Section 60.13 of 36 CFR part 60.

Dated: June 8, 2018.

Julie H. Ernstein,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2018–13941 Filed 6–27–18; 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 Height-Adjustable Desk Platforms and Components Thereof, DN 3326;* 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 Varidesk LLC on June 22, 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 height-adjustable desk platforms and components thereof. The complaint names as respondents: Albeit LLC of San Francisco, CA; ATC Supply LLC of Plainfield, IL; Shenzhen ATC Network Scienology Co., Ltd. of China; Best Choice Products of Ontario, CA; Huizhou Chang He Home Supplies Co., Ltd., of China; Dakota Trading Inc. of Emerson, NJ; Designa Inc. of China; Designa Group, Inc. of China; Eureka LLC of El Dorado Hills, CA; LaMountain International Group LLC of El Dorado Hills, CA; Amazon Import Inc. of El Monte, CA; Hangzhou Grandix Electronics Co., Ltd. of China; Ningbo GYL International Trading Co., Ltd of China; Knape & Vogt Manufacturing Co. of Grand Rapid, MI; JV Products Inc. of Milpitas, CA, Vanson Distributing, Inc. of Milpitas, CA; Vanson Group, Inc. of Milpitas, CA; S.P. Richards Co. DBA Lorell of Smyrna, GA; Nantong Jon Ergonomic Office Co., Ltd. of China; Jiangsu Omni Industrial Co., Ltd. of China; OmniMax USA LLC of Anna, TX; Haining Orizeal Import and Export Co., Ltd. of China; Qidong Vision Mounts Manufacturing Co. of China; Hangzhou KeXiang Keji Youxiangongsi of China; Smugdesk LLC of Littleton, CO; Venditio Group LLC of Elkton, FL; Versa Products Inc. of Los Angeles, CA; Victor Technology LLC of Bolingbrook, IL; CKnapp Sales, Inc. DBA Vivo of Goodfield, IL; Wuhu Xingdian Industrial Co., Ltd. of China; and Wuppessen, Inc. of Ontario, CA. The complainant requests that the Commission issue a general exclusion order or, in the alternative 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. 3326) 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

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

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: June 22, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–13883 Filed 6–27–18; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[USITC SE–18–030]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 5, 2018 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 701–TA–607 and 731–TA–1417 and 1419 (Preliminary) (Steel Propane Cylinders from China and Thailand). The Commission is currently scheduled to complete and file its determinations on July 6, 2018; views of the Commission are currently scheduled to be completed and filed on July 13, 2018.
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 25, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018–14000 Filed 6–26–18; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–18–031]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 10, 2018 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 701–TA–582 and 731–TA–1377 (Final) (Ripe Olives from Spain). The Commission is currently scheduled to complete and file its determinations and views of the Commission by August 1, 2018.
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 25, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018–14001 Filed 6–26–18; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0070]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection: Application for Explosives License or Permit—ATF F 5400.13/5400.16

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.

DATES: Comments are encouraged and will be accepted for 60 days until August 27, 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 Shawn Stevens, Federal Explosives Licensing Center, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Shawn.Stevens@atf.gov,* or by telephone at 304–616–4400.

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. *Type of Information Collection* (check justification or form 83): Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Application for Explosives License or Permit.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF F 5400.13/5400.16.

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: Business or other for-profit.

Other (if applicable): Individuals or households, Not-for-profit institution, and Farms.

Abstract: Chapter 40, Title 18, U.S.C., provides that any person engaged in the business of explosive materials as a dealer, manufacturer, or importer shall be licensed (18 U.S.C. 842 (a) (1)). In addition, provisions are made for the issuance of permits for those who wish to use explosive materials that are shipped in interstate or foreign commerce.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,200 respondents will utilize the form associated with this information collection, and it will take each respondent approximately 1 hour and 30 minutes to respond once to this 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 15, 300 hours which is equal to 10, 200 (total hours) * 1 (# of responses) * 1.5 hours (total time taken to complete each response).

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: June 25, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–13901 Filed 6–27–18; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0071]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection: Notification to Fire Safety Authority of Storage of Explosive Materials

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 1140–0071 (Notification to Fire Safety Authority of Storage of Explosive Materials) is being revised due to a change in burden, since there is a reduction in both the total responses and total burden hours due to less respondents, although there is a slight increase in the cost burden due to higher postage costs since 2015.

DATES: Comments are encouraged and will be accepted for 60 days until August 27, 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 Anita Scheddel, Program Analyst, Explosives Industry Programs Branch, either by mail 99 New York Ave. NE, Washington, DC 20226, or by email at *eipb-informationcollection@atf.gov,* or by telephone at 202–648–7158.

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. *Type of Information Collection* (check justification or form 83): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Notification to Fire Safety Authority of Storage of Explosive Materials

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

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: Business or other for-profit.

Other (if applicable): Individuals or households, Farms, and State, Local, or Tribal Government.

Abstract: The collection of information is necessary for the safety of emergency response personnel responding to fires at sites where explosives are stored. The information is provided both orally and in writing to the authority having jurisdiction for fire safety in the locality in which explosives are stored.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 975 respondents will respond once to this information

collection, and it will take each respondent approximately 30 minutes to complete their responses on the template provided by ATF.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 488 hours which is equal to 975 (# of respondents) * 1(# of responses per respondents) * .5 (30 minutes).

7. *An Explanation of the Change in Estimates:* The total responses and burden hours associated with this IC were reduced by 50 and 25 respectively, due to less respondents since the previous renewal in 2015. However, the total costs for this IC have increased by $27, due to an increase in mailing costs from 45 cents in 2015 to 50 cents in 2018.

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: June 25, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–13900 Filed 6–27–18; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On June 21, 2018, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Hawaii in *United States of America* v. *TWOL LLC et al.,* Civil Action No. 1:18–cv–00242.

The complaint in this Clean Water Act (''CWA'') case was filed against the defendants concurrently with the lodging of the consent decree. The complaint alleges that Defendants TWOL LLC, Loi Chi Hang, and Nguyen Ngoc Tran are each liable for civil penalties stemming from violations of the CWA, 33 U.S.C. 1321, aboard the Honolulu-based commercial fishing vessel *Pacific Dragon* f/k/a *Elizabeth.* The United States' allegations address discharges of oily waste from the vessel's bilge while fishing for tuna off the Hawaiian coast and violations of the United States Coast Guard's pollution control regulations, including failure to provide sufficient capacity to retain oily bilge water on board the vessel. The complaint seeks civil penalties from TWOL LLC, Mr. Hang, and Mr. Tran, along with injunctive relief from the same defendants and Defendant LNK Fishery LLC. TWOL LLC was the owner of the *Pacific Dragon* f/k/a *Elizabeth* when the alleged CWA violations occurred, and LNK Fishery LLC is the current owner of the vessel. Mr. Hang and Mr. Tran are managing members of both companies.

Under the proposed consent decree, the defendants will perform corrective measures to remedy the violations and prevent future violations, including: (1) Repairing the vessel to reduce the quantity of oily waste generated during a fishing voyage; (2) providing crewmembers with training on the proper handling of oily wastes; (3) documenting proper oily waste management and disposal after returning to port; and (4) submitting compliance reports to the Coast Guard and to the Department of Justice.

The consent decree also requires TWOL LLC, Mr. Hang, and Mr. Tran to each pay a civil penalty. The penalty amounts were set after considering each defendant's limited ability to pay a higher penalty, as demonstrated through documentation submitted to the United States and analyzed by a financial expert. TWOL LLC must pay a civil penalty of $1,000; Mr. Hang must pay a civil penalty of $8,000; and Mr. Tran must pay a civil penalty of $5,000. Under the terms of the CWA, the penalties paid for these discharges will be deposited in the federal Oil Spill Liability Trust Fund managed by the National Pollution Funds Center.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *TWOL LLC et al.,* D.J. Ref. No. 90–5–1–1–11818. 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 proposed consent decree 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 proposed consent decree 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 $15.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–13873 Filed 6–27–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Longshore and Harbor Workers' Compensation Proposed Renewal of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the proposed collection: Request for Earnings Information (LS–426). A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 27, 2018.

ADDRESSES: You may submit comments by mail, delivery service, or by hand to Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210; or by fax to (202) 354–9647; or by Email to

Ferguson.Yoon@dol.gov. Please use only one method of transmission for comments (mail/delivery, fax, or Email). Please note that comments submitted after the comment period will not be considered.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers' injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees.

The Secretary of Labor is authorized, under the Act, to make rules and regulations to administer the Act and its extensions. Pursuant to the LHWCA, injured employees shall receive compensation in an amount equal to 66–2/3 per centum of their average weekly wage. Form LS–426, Request for Earnings Information, is used by district offices to collect wage information from injured workers to assure payment of compensation benefits to injured workers at the proper rate. This information is needed for determination of compensation benefits in accordance with section 10 of the LHWCA. This information collection is currently approved for use through September 30, 2018.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval of this information collection in order to carry out its responsibility to assure payment of compensation benefits to injured workers at the proper rate.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Request for Earnings Information.

OMB Number: 1240–0025.

Agency Number: LS–426.

Affected Public: Individuals or households.

Total Respondents: 100.

Total Annual Responses: 100.

Estimated Total Burden Hours: 25.

Estimated Time per Response: 15 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $23.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 21, 2018.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2018–13882 Filed 6–27–18; 8:45 am]

BILLING CODE 4510–CF–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–048]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by July 30, 2018. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major

subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Forest Service (DAA–0095–2018–0001, 1 item, 1 temporary item). General correspondence relating to notification and review of rules, laws, regulations, and orders.

2. Department of Agriculture, Forest Service (DAA–0095–2018–0002, 1 item, 1 temporary item). Background and guidance records related to the management of the Directives Program.

3. Department of Agriculture, Forest Service (DAA–0095–2018–0004, 1 item, 1 temporary item). Administrative reports, reviews, and evaluations of the State and Private Forestry Program.

4. Department of Agriculture, Forest Service (DAA–0095–2018–0005, 1 item, 1 temporary item). Developmental proposals, surveys, requests, and background evaluations related to organizational changes.

5. Department of Agriculture, Forest Service (DAA–0095–2018–0068, 1 item, 1 temporary item). Administrative documents providing guidance on engineering operations, such as the creation of signs, posters, and driver operator guides.

6. Department of Agriculture, Forest Service (DAA–0095–2018–0070, 1 item, 1 temporary item). Administrative training records for personnel assigned to construction projects, including training requirement documents, test data, and correspondence.

7. Department of Agriculture, Forest Service (DAA–0095–2018–0101, 1 item, 1 temporary item). General administrative records pertaining to the Forest Service Survey Program. Included are remonumentation and land records, such as correspondence, statistical documents, and annual survey activity reports.

8. Department of Agriculture, Forest Service (DAA–0095–2018–0102, 1 item, 1 temporary item). Administrative records pertaining to the Forest Service Sign and Poster Program. Included are guidance and planning records, such as correspondence, guidelines, and sign plans.

9. Department of Agriculture, Forest Service (DAA–0095–2018–0103, 1 item, 1 temporary item). General records pertaining to construction and design projects, including geotechnical and materials-engineering records documenting the development and testing of construction and design materials.

10. Department of Agriculture, Forest Service (DAA–0095–2018–0104, 1 item, 1 temporary item). Authorization and monitoring records related to aerial adventure course permit holders and records pertaining to Forest Service safety standards and technical requirements, including case files, documentation of actions taken, and permit holder's compliance records.

11. Department of Agriculture, Forest Service (DAA–0095–2018–0105, 1 item, 1 temporary item). General administrative records of the Forest Service Public Health and Pollution Control Facilities, including records regarding the administration of pollution abatement, as well as sewage, solid waste, and water supply systems on Forest Service lands.

12. Department of Agriculture, Forest Service (DAA–0095–2018–0107, 1 item, 1 temporary item). General administrative records of the Forest Service Dam Management System. Included are correspondence records regarding the administration of dam management systems, dam inventories, and dam operation and maintenance.

13. Department of Agriculture, Forest Service (DAA–0095–2018–0109, 2 items, 2 temporary items). General administrative records related to travel planning for transportation systems. Included are analysis and development records relating to transportation and travel projects, case studies, correspondence, and planning documents.

14. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2017–0015, 1 item, 1 temporary item). Master files of an electronic information system for evaluating weapons hazards through the use of models and scenarios.

15. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2017–0016, 1 item, 1 temporary item). Master files of an electronic information system for tracking and managing weapons systems.

16. Department of Defense, National Security Agency (DAA–0457–2017–0005, 3 items, 3 temporary items). Records of the Civil Liberties, Privacy and Transparency Office, including complaints and correspondence files.

17. Department of Homeland Security, United States Secret Service (DAA–0087–2018–0001, 1 item, 1 temporary item). Chaplain counseling case files.

18. Department of Justice, Drug Enforcement Administration (DAA–0170–2017–0001, 4 items, 4 temporary items). Records related to communications operations, including the agency command center, equipment, infrastructure, service, and security.

19. Department of State, Office of the Secretary (DAA–0059–2018–0001, 2 items, 1 temporary item). Working case files for the Office of the Ombudsman. Proposed for permanent retention are records relating to policy, organization, and mission of the program.

20. Securities and Exchange Commission, Division of Trading and Markets (DAA–0266–2018–0005, 2 items, 2 temporary items). Records relating to legal advisory services rendered internally to offices and divisions.

21. Securities and Exchange Commission, Division of Trading and Markets (DAA–0266–2018–0006, 3 items, 3 temporary items). Records relating to research, analysis, and

monitoring of financial market trends, events, and participants.

22. Securities and Exchange Commission, Office of Inspector General (DAA–0266–2018–0002, 11 items, 7 temporary items). Records relating to the actions and activities of the office. Included are routine investigative case files, complaints and inquiries that do not result in the creation of a formal investigative case, and background material related to audit cases. Proposed for permanent retention are significant investigative and litigation case files, internal program and organizational audits, and reports to Congress.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2018–13884 Filed 6–27–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research (DMR) (#1203)—2-Dimensional Crystal Consortium (2DCC), Materials Innovation Platform (MIP), Pennsylvania State University (Site Visit).

Date and Time: July 23, 2018; 8:00 a.m.–8:00 p.m., July 24, 2018; 8:00 a.m.–3:00 p.m.

Place: Pennsylvania State University, University Park, PA 16802.

Type of Meeting: Part open.

Contact Person: Dr. Charles Ying, Program Director, MPS/DMR, National Science Foundation, 2415 Eisenhower Avenue, Room E 9467, Alexandria, VA 22314; Telephone (703) 292–8428.

Purpose of Meeting: Site visit to provide advice and recommendations concerning further support of the MIP at Pennsylvania State University.

Agenda

Monday, July 23, 2018

8:00 a.m.–9:15 a.m., Closed—Executive Session
9:15 a.m.–11:30 a.m., Open—Review of 2DCC MIP
11:30 a.m.–1:00 p.m., Closed—Executive Session
1:00 p.m.–4:00 p.m., Open—Review of 2DCC MIP
4:00 p.m.–8:00 p.m., Closed—Executive Session

Tuesday, July 24, 2018

8:00 a.m.—3:00 p.m., Closed—Executive Session.

Reason for Closing: The work being reviewed during closed portions of the site review includes information of a proprietary or confidential nature including technical information; financial data, such as salaries and personal information concerning individuals associated with 2DCC/MIP program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 25, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–13897 Filed 6–27–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Proposal Review Panel for Materials Research (DMR) (#1203)—Platform for the Accelerated Realization, Analysis, and Discovery of Interface Materials (PARADIM), Materials Innovation Platform (MIP), Cornell University, Ithaca, NY (Site Visit).

DATE AND TIME:

August 1, 2018; 8:00 a.m.–8:00 p.m.
August 2, 2018; 8:00 a.m.–3:00 p.m.

PLACE: Cornell University, B07 Day Hall, Ithaca, NY 14853.

TYPE OF MEETING: Part open.

CONTACT PERSON: Dr. Charles Ying, Program Director, MPS/DMR, National Science Foundation, 2415 Eisenhower Avenue, Room E 9467, Alexandria, VA 22314; Telephone: (703) 292–8428.

PURPOSE OF MEETING: Site visit to provide advice and recommendations concerning further support of the MIP at Cornell University.

Agenda

Wednesday, August 1, 2018

8:00 a.m.–9:15 a.m. Closed—Executive Session
9:15 a.m.–11:30 a.m. Open—Review of PARADIM MIP
11:30 a.m.–1:00 p.m. Closed—Executive Session
1:00 p.m.–4:00 p.m. Open—Review of PARADIM MIP
4:00 p.m.–8:00 p.m. Closed—Executive Session

Thursday, August 2, 2018

8:00 a.m.–3:00 p.m. Closed—Executive Session

Reason for Closing: The work being reviewed during closed portions of the site review includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with PARADIM/MIP program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 25, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–13938 Filed 6–27–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Technical Specifications for Reactor Coolant System Vacuum Fill and Inspections, Tests, Analyses, and Acceptance Criteria for Containment Floodup

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 118 and 117 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on March 29, 2018.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Jennifer Borges telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated by September 25, 2017 (ADAMS Accession No. ML17268A188), as supplemented by letters dated November 16, 2017, December 18, 2017, and February 14, 2018 (ADAMS Accession Nos. ML17320A808, ML17352B003 and ML18045A082, respectively).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 118 and 117 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee proposed changes to COL Appendix A, Technical Specifications, and plant-specific DCD Tier 2 information, as well as departures from plant specific Tier 1 information (and associated COL Appendix C information). The requested amendment proposed changes to Technical Specifications to allow Reactor Coolant System vacuum fill operations in cold shutdown (*i.e.,* Mode 5) conditions, and proposes conforming consistency changes to plant-specific DCD information in the form of departures from DCD Tier 2 information, as incorporated into the Updated Final Safety Analysis Report (UFSAR).

The amendment request also requested a departure from Tier 1 Design Descriptions and Inspections, Tests, Analyses, and Acceptance Criteria related to inspecting the volume in the containment that allows for floodup to support long-term core cooling for postulated loss-of-coolant accidents and proposed corresponding changes to plant-specific AP1000 DCD Tier 2 information in the UFSAR.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML18075A104.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs, NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML18075A097 and ML18075A099, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs, NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML18075A100 and ML18075A102, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated September 25, 2017, as supplemented by letters dated November 16, 2017, December 18, 2017, and February 14, 2018, Southern Nuclear Operating Company requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 17–027, ''Technical Specifications for Reactor Coolant System Vacuum Fill and Inspections, Tests, Analyses, and Acceptance Criteria for Containment Floodup.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML18075A104, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License, as described in the request dated September 25, 2017, as supplemented by letters dated November 16, 2017, December 18, 2017, and February 14, 2018. This exemption is related to, and necessary for the granting of License Amendment No. 118 [for Unit 3, 117 for Unit 4], which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML18075A104), this exemption meets the eligibility criteria for categorical exclusion set forth in 10

CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated September 25, 2017, as supplemented by letters dated November 16, 2017, December 18, 2017, and February 14, 2018, (ADAMS Accession No. ML17268A188, ML17320A808, ML17352B003 and ML18045A082, respectively), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs, NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on December 19, 2017 (82 FR 60229). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemptions and issued the amendments that the licensee requested on September 25, 2017, as supplemented by letters dated November 16, 2017, December 18, 2017, and February 14, 2018.

The exemptions and amendments were issued on March 29, 2018, as part of a combined package to the licensee (ADAMS Accession No. ML18075A094).

Dated at Rockville, Maryland, on June 22, 2018.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2018–13892 Filed 6–27–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Changes to Containment Cooling and Spent Fuel Pool Makeup Strategies

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 126 and 125 to Combined Licenses (COLs), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company; Oglethorpe Power Corporation; MEAG Power SPVM, LLC; MEAG Power SPVJ, LLC; MEAG Power SPVP, LLC; and the City of Dalton, Georgia (the licensee), for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on June 7, 2018.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Jennifer Borges; 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendments and exemptions were submitted by letter dated July 14, 2017, and is available in ADAMS under Accession No. ML17198A596.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Peter Hearn, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1189; email: *Peter.Hearn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000 Design,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 126 and 125 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would revise Tier 1 information to change the inspected volume for the spent fuel pool and cask washdown pit with corresponding changes to the minimum volumes and reference measurement locations, and add an inspection for the minimum volume for the cask loading pit.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the

NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML18100A079.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML18100A071 and ML18100A073, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML18100A074 and ML18100A077, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In an application dated July 14, 2017, the licensee requested from the NRC or Commission an exemption to allow departures from Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in 10 CFR part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 17–021, ''Changes to Containment Coolant and Spent Fuel Makeup Strategies.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML18100A079, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, as described in the licensee's request dated July 14, 2017. This exemption is related to, and necessary for, the granting of License Amendment Nos. 126 (Unit 3) and 125 (Unit 4), which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML18100A079), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated July 14, 2017 (ADAMS Accession No. ML17198A596), the licensee requested that the NRC amend the COLs for VEGP Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendments are described in Section I of this document.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on November 22, 2017 (82 FR 55654). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on July 14, 2017. The exemption and amendment were issued on June 7, 2018, as part of a combined package to the licensee (ADAMS Accession No. ML18100A069).

Dated at Rockville, Maryland, this 22nd day of June, 2018.

For the Nuclear Regulatory Commission.

Paul B. Kallan,

Acting Branch Chief, Licensing Branch 4, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2018–13860 Filed 6–27–18; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2018–0127; Docket Nos. 50–259, 50–260, 50–296, and 72–052; Docket Nos. 50–327, 50–328, and 72–034; Docket Nos. 50–390, 50–391, and 72–1048]

Tennessee Valley Authority, Browns Ferry Nuclear Plant, Units 1, 2, and 3, and Independent Spent Fuel Storage Installation; Sequoyah Nuclear Plant, Units 1 and 2, and Independent Spent Fuel Storage Installation; Watts Bar Nuclear Plant, Units 1 and 2, and Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68 for the Browns Ferry Nuclear Plant (Browns Ferry), Units 1, 2, and 3, respectively; Renewed Facility Operating License Nos. DPR–77 and DPR–79 for the Sequoyah Nuclear Plant (Sequoyah), Units 1 and 2, respectively; and Facility Operating License Nos. NPF–90 and NPF–96 for the Watts Bar Nuclear Plant (Watts Bar), Units 1 and 2, respectively. The proposed amendments would revise the implementation date for the NRC-approved license amendments to upgrade the Emergency Action Level (EAL) schemes for Browns Ferry, Units 1, 2, and 3; Sequoyah, Units 1 and 2; and Watts Bar, Units 1 and 2.

DATES: Comments must be filed by July 30, 2018. Requests for a hearing or petitions for leave to intervene must be filed by August 27, 2018.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0127. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Andrew Hon, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8480; email: *Andrew.Hon@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0127 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0127.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0127 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

I. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68 for Browns Ferry, Units 1, 2, and 3, respectively, located in Limestone County, Alabama; Renewed Facility Operating License Nos. DPR–77 and DPR–79 for Sequoyah, Units 1 and 2, respectively, located in Hamilton County, Tennessee; and Facility Operating License Nos. NPF–90 and NPF–96 for Watts Bar, Units 1 and 2, respectively, located in Rhea County, Tennessee.

The proposed amendments would revise the implementation date for the NRC-approved license amendments to upgrade the EAL schemes for Browns Ferry, Units 1, 2, and 3; Sequoyah, Units 1 and 2; and Watts Bar, Units 1 and 2.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the implementation date for the TVA [Tennessee Valley Authority] EAL schemes to adopt the NRC-endorsed guidance in NEI [Nuclear Energy Institute] 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' does not reduce the capability to meet the emergency planning requirements established in 10 CFR 50.47 and 10 CFR 50, Appendix E. The proposed change does not reduce the functionality, performance, or capability of the TVA ERO [Emergency Response Organization] to respond in mitigating the consequences of any design basis accident.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facilities or the manner in which the plants are operated and maintained. The proposed change does not adversely affect the ability of structures, systems, and components (SSC) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptable limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposure.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the implementation date for the TVA EAL schemes to adopt the NRC-endorsed guidance in NEI 99–01, Revision 6, does not involve any physical changes to plant systems or equipment. The proposed change does not involve the addition of any new plant equipment. The proposed change will not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. All TVA ERO functions will continue to be performed as required. The proposed change does not create any new credible failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from those that have been previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the implementation date for the TVA EAL schemes to adopt the NRC-endorsed guidance in NEI 99–01, Revision 6, does not alter or exceed a design basis or safety limit. There is no change being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes. There are no changes to setpoints or environmental conditions of any structure, system, or component (SSC) or the manner in which any SSC is operated. Margins of safety are unaffected by the proposed change to the NEI 99–01, Revision 6, EAL scheme guidance implementation date. The applicable requirements of 10 CFR 50.47 and 10 CFR 50, Appendix E will continue to be met.

Therefore, the proposed changes do not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)''

section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application,

participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated June 15, 2018 (ADAMS Accession No. ML18169A222).

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Acting Branch Chief: Booma Venkataraman.

Dated at Rockville, Maryland, this 22nd day of June 2018.

For the Nuclear Regulatory Commission.

Andrew Hon,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–13874 Filed 6–27–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0131]

Monitoring the Effectiveness of Maintenance at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1336, ''Monitoring the Effectiveness of Maintenance at Nuclear Power Plants.'' This proposed guide, Revision 4, has been revised to addresses new issues identified since Revision 3 of RG 1.160 was issued and endorses with clarification NUMARC 93–01, ''Industry Guidelines for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' Revision 4F. The proposed revision describes methods that are acceptable to the NRC staff for compliance with the requirements for monitoring the effectiveness of maintenance at nuclear power plants.

DATES: Submit comments by July 30, 2018. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0131. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7A60, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ami Agrawal, Office of Nuclear Reactor Regulation, telephone: 301–415–8310, email: *Ami.Agrawal@nrc.gov;* and Stephen Burton, Office of Nuclear Regulatory Research, telephone: 301–415–7000, email: *Stephen.Burton@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0131 when contacting the NRC about the availability of information regarding this action. You may obtain publically-available information related to this action, by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0131.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The DG–1336 is available in ADAMS under Accession No. ML18129A080.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0131 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The Maintenance Rule (Part 50.65 of title 10 of the *Code of Federal Regulations* (10 CFR)) requires each holder of an operating license for a nuclear power plant under 10 CFR part 50 and each holder of a combined license under 10 CFR part 52 (after the Commission makes certain findings) to monitor the performance or condition of structures, systems, or components, against licensee-established goals, in a manner sufficient to provide reasonable assurance that in-scope structures, systems, and components intended functions. The Maintenance Rule also applies to nuclear power plant for which the licensee has submitted the certifications that it has ceased operating permanently, but limited to structures, systems, or components associated with the storage, control, and maintenance of spent fuel in a safe condition, in a manner sufficient to provide reasonable assurance that these structures, systems, and components are

capable of fulfilling their intended functions. Last, an application for a combined license shall contain a final safety analysis report that provides a description of the program, and its implementation, for monitoring the effectiveness of maintenance necessary to meet the requirements of 10 CFR 50.65.

The Nuclear Energy Institute (NEI) is submit revision 4F of NUMARC 93–01, ''Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants'' for endorsement. NEI explained that NUMARC 93–01 was developed to establish an acceptable approach for licensees to meet the Maintenance Rule. Revision 4F of NUMARC 93–01 addresses the application of the Maintenance Rule to the use of diverse and flexible coping strategies (FLEX) support guidelines (FSGs) in plant emergency operating procedures (EOPs), as well as some other minor wording changes.

The DG, entitled, ''Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' is a proposed revision temporarily identified by its task number, DG–1336. DG–1336 is proposed revision 4 of RG 1.160, ''Monitoring the Effectiveness of Maintenance at Nuclear Power Plants.'' The NRC's proposed revision to RG 1.160 would endorse with clarification NUMARC 93–01 Revision 4F. The NRC finds that endorsement would be beneficial in that the agency positions with respect to FLEX equipment, the Maintenance Rule, and Revision 4F of NUMARC 93–01 would be readily understood.

III. Backfitting and Issue Finality

This DG describes methods acceptable to the staff of the NRC for demonstrating compliance with the provisions of 10 CFR 50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' of 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities.'' As discussed in Section D. ''Implementation'' of this DG, the NRC does not intend to impose this guide, if finalized, on applicants for, or holders of, licenses.

This DG may be applied to applications for combined licenses under 10 CFR part 52 docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications submitted after the issuance of the regulatory guide. Such action would not constitute backfitting as defined in the 10 CFR 50.109 or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants, with certain exceptions, are not within the scope of entities that are the subject of the Backfit Rule or an issue finality provision in 10 CFR part 52. However, the scope of backfitting and issue finality extends only to the matters resolved in the license or regulatory approval. The matters addressed in this DG (concerning monitoring the effectiveness of maintenance at nuclear power plants) has not previously been proposed to be for a construction permit, design certification rule, or standard design approval. Therefore, the extent to which an applicant can rely on a backfitting or issue finality provision is limited to the extent that the applicant has addressed the matters in this regulatory guide during the review and approval of the construction permit, design certification rule, or standard design approval.

Dated at Rockville, Maryland, this 22nd day of June, 2018.

For the Nuclear Regulatory Commission.

Edward O'Donnell,

Acting Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2018–13876 Filed 6–27–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2018–186 and CP2018–260]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 2, 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).:* MC2018–186 and CP2018–260; *Filing Title:* Request of the United States Postal Service to Add Global Expedited Package Services—Non-Published Rates 14 (GEPS—NPR 14) to the Competitive Products List and Notice of Filing GEPS—NPR 14 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 22, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.;*

Public Representative: Gregory Stanton; *Comments Due:* July 2, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–13930 Filed 6–27–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—Global Expedited Package Services—Non-Published Rates

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Expedited Package Services—Non-Published Rates 14 (GEPS–NPR 14) to the Competitive Products List.

DATES: *Date of notice:* June 28, 2018.

FOR FURTHER INFORMATION CONTACT: Kyle R. Coppin, 202–268–2368.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on June 22, 2018, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to add Global Expedited Package Services—Non-Published Rates 14 (GEPS—NPR 14) to the Competitive Products List and Notice of Filing GEPS—NPR 14 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–186 and CP2018–260.

Ruth Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2018–13879 Filed 6–27–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83499; File No. SR–BOX–2018–17)]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Withdrawal of Proposed Rule Change To Amend Rules 7150 and 7245

June 22, 2018.

On May 14, 2018, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 7150 and 7245 to provide certain account type information in its Price Improvement Period and Complex Price Improvement Period auction notifications. The proposed rule change was published for comment in the **Federal Register** on May 31, 2018.[3] The Commission received no comment letters on the proposal. On June 20, 2018, the Exchange withdrew the proposed rule change (SR–BOX–2018–17).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13886 Filed 6–27–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83500; File No. SR–BOX–2018–23]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7260 by Extending the Penny Pilot Program Through December 31, 2018

June 22, 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 June 18, 2018, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7260 by extending the Penny Pilot Program through December 31, 2018. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the effective time period of the Penny Pilot Program that is currently scheduled to expire on June 30, 2018, until December 31, 2018.[3] The Penny Pilot Program permits certain classes to be quoted in penny increments. The minimum price variation for all classes included in the Penny Pilot Program, except for PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM''), will continue to be $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83317 (May 24, 2018), 83 FR 25074.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot Program has been in effect on the Exchange since its inception in May 2012. *See* Securities Exchange Act Release Nos. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No. 10–206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission), 67328 (June 29, 2012), 77 FR 40123 (July 6, 2012) (SR–BOX–2012–007), 68425 (December 13, 2012), 77 FR 75234 (December 19, 2013) (SR–BOX–2012–021), 69789 (June 18, 2013), 78 FR 37854 (June 24, 2013) (SR–BOX–2013–31), 71056 (December 12, 2013), 78 FR 76691 (December 18, 2013) (SR–BOX–2013–56), 72348 (June 9, 2014), 79 FR 33976 (June 13, 2014) (SR–BOX–2014–17), 73822 (December 11, 2014), 79 FR 75606 (December 18, 2014) (SR–BOX–2014–29), 75295 (June 25, 2015), 80 FR 37690 (July 1, 2015)(SR–BOX–2015–23), 78172 (June 28, 2016), 81 FR 43325 (July 1, 2016)(SR–BOX–2016–24), 79429 (November 30, 2016), 81 FR 87991 (December 6, 2016)(SR–BOX–2016–55); 80828 (May 31, 2017), 82 FR 26175 (June 6, 2017) (SR–BOX–2017–18) and 82353 (December 19, 2017), 82 FR 61087 (December 26, 2017). The extension of the effective date and the revision of the date to replace issues that have been delisted are the only changes to the Penny Pilot Program being proposed at this time.

IWM will continue to be quoted in $0.01 increments for all options series.

The Exchange may replace, on a semi-annual basis, any Pilot Program classes that have been delisted on the second trading day following July 1, 2018. The Exchange notes that the replacement classes will be selected based on trading activity for the six month period beginning December 1, 2017 and ending May 31, 2018 for the July 2018 replacements. The Exchange will employ the same parameters to prospective replacement classes as approved and applicable under the Pilot Program, including excluding high-priced underlying securities. The Exchange will distribute a Regulatory Circular notifying Participants which replacement classes shall be included in the Penny Pilot Program.

BOX is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and Section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot until December 31, 2018 and changes the dates for replacing Penny Pilot issues that were delisted to the second trading day following July 1, 2018, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange. Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot is an industry wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative prior to 30 days after the date of the filing.[9] 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 because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[11] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2018–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2018–23. This file

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

[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 the 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 pre-filing requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

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, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2018–23 and should be submitted on or before July 19, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13887 Filed 6–27–18; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83498; File No. SR–NYSEAMER–2018–30]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.35E

June 22, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 18, 2018, NYSE American LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.35E (Auctions) to revise the securities for which it will report an Official Closing Price. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 7.35E (Auctions) to revise the securities for which it will report an Official Closing Price.[4] Rule 7.35E(d)(4) currently states that the Exchange reports an Official Closing Price for all securities that trade on the Exchange. This includes not only securities for which the Exchange is the primary listing market, but also all UTP Securities that are traded on the Exchange.[5] Because the Exchange does not calculate an Official Closing Price for UTP Securities when the Exchange reports an Official Closing Price for such securities, the Exchange uses either the closing price calculated by the primary listing market or, if no closing price has been disseminated by the primary listing market, the last consolidated last-sale price for such security.

The Exchange proposes to amend Rule 7.35E(d)(4) to provide that the Exchange would disseminate an Official Closing Price for Auction-Eligible Securities only. An Auction-Eligible Security is defined as all ''securities for which the Exchange is the primary listing market and UTP Securities designated by the Exchange.''[6] As a result, the Exchange would report an Official Closing Price for only those securities for which the Exchange calculates an Official Closing Price pursuant to Rule 1.1E(gg). The Exchange believes that, by ceasing reporting an Official Closing Price in securities that are not auction-eligible on the Exchange, it would reduce the likelihood of disparate or duplicative prices being disseminated and identified as a UTP Security's formal closing price.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the Exchange would cease disseminating a closing price for UTP Securities and only disseminate an Official Closing Price for Auction-Eligible Securities. The Exchange believes that this proposed rule change would reduce the likelihood of disparate or duplicative prices being disseminated and identified as a UTP Security's formal closing price. Therefore, the proposed rule change

[4] The term ''Official Closing Price'' is defined in Exchange Rule 1.1E(gg)(1).

[5] The term ''UTP Securities'' is defined in Rule 1.1E(ii).

[6] *See* Exchange Rule 7.35E(a)(1). To date, the Exchange has not designated any UTP Securities as an Auction-Eligible Security.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

would reduce potential investor confusion by ensuring that the Exchange does not contribute to the dissemination of duplicative or disparate closing prices for UTP Securities. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is not designed to have a competitive impact. It is simply intended to amend the Exchange's rules to state that it would disseminate an Official Closing Price for Auction-Eligible Securities only. As a result, the Exchange would no longer disseminate an Official Closing Price for UTP Securities, reducing the likelihood of disparate or duplicative prices being disseminated and identified as a UTP Security's formal closing price.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because the proposed rule change would reduce potential investor confusion regarding the Official Closing Price for a UTP Security. The Exchange states that it anticipates being able to implement the technology changes supporting the proposed rule change within 30 days from filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[14]

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–NYSEAMER–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–NYSEAMER–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–NYSEAMER–2018–30 and should be submitted on or before July 19, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–13885 Filed 6–27–18; 8:45 am]

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[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 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).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Advisory Circular (AC): Reporting of Laser Illumination of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our

intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the reporting of unauthorized illumination of aircraft by lasers. The information to be collected will be used to assist law enforcement and provide support for recommended mitigation actions to be taken to ensure continued safe and orderly flight operations.

DATES: Written comments should be submitted by August 27, 2018.

ADDRESSES: Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0698.

Title: Advisory Circular (AC): Reporting of Laser Illumination of Aircraft.

Form Numbers: Advisory Circular 70–2A, Reporting of Laser Illumination of Aircraft.

Type of Review: Renewal of an information collection.

Background: Advisory Circular 70–2A provides guidance to civilian air crews on the reporting of laser illumination incidents and recommended mitigation actions to be taken in order to ensure continued safe and orderly flight operations. Information is collected from pilots and aircrews that are affected by an unauthorized illumination by lasers. The requested reporting involves an immediate broadcast notification to Air Traffic Control (ATC) when the incident occurs, as well as a broadcast warning of the incident if the aircrew is flying in uncontrolled airspace. In addition, the AC requests that the aircrew supply a written report of the incident and send it by fax or email to the Washington Operations Control Complex (WOCC) as soon as possible.

Respondents: Approximately 1,100 pilots and crewmembers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 183 hours.

Issued in Washington, DC, on June 22, 2018.

Karen Shutt,

Manager, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–13931 Filed 6–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Financial Responsibility for Licensed Launch Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used to determine if licensees have complied with financial responsibility requirements for maximum probable loss determination (MPL) analysis as set forth in FAA regulations. The FAA is responsible for determining MPL required to cover claims by a third party for bodily injury or property damage, and the United States, its agencies, and its contractors and subcontractors for covered property damage or loss, resulting from a Commercial space transportation permitted or licensed activity. The MPL determination forms the basis for financial responsibility requirements issued in a license or permit order.

DATES: Written comments should be submitted by August 27, 2018.

ADDRESSES: Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0601.

Title: Financial Responsibility for Licensed Launch Activities.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: This collection is applicable upon concurrence of requests for conducting commercial launch operations as prescribed in 14 CFR parts 401, *et al.,* Commercial Space Transportation Licensing Regulation. A commercial space launch services provider must complete the Launch Operators License, Launch-Specific License or Experimental Permit in order to gain authorization for conducting commercial launch operations.

The information will be collected per 14 CFR part 440 Appendix A. A permit or license applicant is required to provide the FAA information to conduct maximum probable loss determination. Also, it is a mandatory requirement that all commercial permitted and licensed launch applicants obtain financial coverage for claims by a third party for bodily injury or property damage. FAA is responsible for determining the amount of financial responsibility required using maximum probable loss determination. The financial responsibility must be in place and active for every launch activity. Applicants' launched activity can vary, on average, from once a week to once a year. If there are any significant changes to the launch vehicle that potentially could modify the results of the financial responsibility determined, the permitted and licensed applicant must provide updated information to the FAA. The FAA will use the updated collected information and revise the financial responsibility results.

The following is summary of the information required to conduct an MPL:

1. Mission description.
- Launch trajectory;
- Orbital inclination; and
- Orbit altitudes (apogee and perigee).

2. Flight sequence.
3. Staging events and the time for each event.
4. Impact locations.
5. Identification of the launch site facility, including the launch complex on the site, planned date of launch, and launch windows.
6. Launch vehicle description.
• General description of the launch vehicle and its stages, including dimensions.
• Description of major systems, including safety systems.
• Description of rocket motors and type of fuel used.
• Identification of all propellants to be used and their hazard classification under the Hazardous Materials
7. Payload.
8. Flight safety system.

Respondents: 10 commercial space launch services providers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 1,000 hours.

Issued in Washington, DC, on June 25, 2018.

Robin Darden,

Management Support Specialist, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–13933 Filed 6–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Annual Letters—Certificates of Authority (A) and Admitted Reinsurer (B)

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Annual Letters—Certificates of Authority (A) and Admitted Reinsurer.

DATES: Written comments should be received on or before August 27, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Letters—Certificates of Authority (A) and Admitted Reinsurer.

OMB Number: 1530–0014.

Abstract: The information is collected so that Treasury can make the appropriate determinations as to the renewal of the Certificates of Authority of currently certified companies and the renewal of companies currently recognized by Treasury as Admitted Reinsurers. Included in the package is the Annual Letter to Executive Officers of Surety Companies Reporting to the Treasury (A) and the Annual Letter to Executive Officers of Companies Recognized by the Treasury as Admitted Reinsurers of Surety Companies Doing Business with the United States Government (B). The Secretary of the Treasury has been given authority pursuant to 31 U.S.C., 9304–9308 to certify insurance companies wishing to write or reinsure federal surety bonds. The authority has been further codified at 31 CFR, part 223.9 which specifies guidelines applicable to companies seeking certification while part 223.12 specifies requirements applicable to companies seeking recognition as an Admitted Reinsurer.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 343.

Estimated Time per Respondent: 18.75 hours.

Estimated Total Annual Burden Hours: 6,431.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 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 respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 25, 2018.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2018–13891 Filed 6–27–18; 8:45 am]

BILLING CODE 4810–AS–P

UNITED STATES SENTENCING COMMISSION

Requests for Applications; Practitioners Advisory Group

AGENCY: United States Sentencing Commission.

ACTION: Notice.

SUMMARY: In view of upcoming vacancies in the voting membership of the Practitioners Advisory Group, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to one of the vacancies to apply. The voting memberships covered by this notice are the circuit memberships for the Third, Fifth, Tenth, and Eleventh Circuits. An applicant for voting membership of the Practitioners Advisory Group should apply by sending a letter of interest and resume to the Commission as indicated in the addresses section below. Application materials should be received by the Commission not later than August 31, 2018.

DATES: Application materials for voting membership of the Practitioners Advisory Group should be received not later than August 31, 2018.

ADDRESSES: An applicant for voting membership of the Practitioners Advisory Group should apply by sending a letter of interest and resume to the Commission by electronic mail or regular mail. The email address is *pubaffairs@ussc.gov.* The regular mail address is United States Sentencing Commission, One Columbus Circle NE, Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502–4500, *pubaffairs@ussc.gov.* More information about the Practitioners Advisory Group is available on the Commission's website at *www.ussc.gov/advisory-groups.*

SUPPLEMENTARY INFORMATION: The Practitioners Advisory Group is a standing advisory group of the United States Sentencing Commission pursuant

to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission invites any individual who is eligible to be appointed to a voting membership covered by this notice (*i.e.,* the circuit memberships for the Third, Fifth, Tenth, and Eleventh Circuits) to apply by sending a letter of interest and a resume to the Commission as indicated in the **ADDRESSES** section above.

Authority: 28 U.S.C. 994(a), (o), (p), 995; USSC Rules of Practice and Procedure 5.4.

William H. Pryor Jr.,

Acting Chair.

[FR Doc. 2018–13936 Filed 6–27–18; 8:45 am]

BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Proposed Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice; Request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the United States Sentencing Commission is seeking comment on possible policy priorities for the amendment cycle ending May 1, 2019.

DATES: Public comment should be received by the Commission on or before August 10, 2018.

ADDRESSES: Comments should be sent to the Commission by electronic mail or regular mail. The email address is *pubaffairs@ussc.gov.* The regular mail address is United States Sentencing Commission, One Columbus Circle NE, Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502–4500, *pubaffairs@ussc.gov.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2019. Other factors, such as legislation requiring Commission action, may affect the Commission's ability to complete work on any or all identified priorities by May 1, 2019. Accordingly, the Commission may continue work on any or all identified priorities after that date or may decide not to pursue one or more identified priorities.

Pursuant to 28 U.S.C. 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

The Commission has identified the following tentative priorities:

(1) Continuation of its multiyear examination of the structure of the guidelines post-*Booker* and consideration of legislative recommendations or guideline amendments to simplify the guidelines, while promoting proportionality and reducing sentencing disparities, and to account appropriately for the defendant's role, culpability, and relevant conduct.

(2) A multiyear study of synthetic drug offenses committed by organizational defendants, including possible consideration of amendments to Chapter Eight (Sentencing Organizations) to address such offenses.

(3) Continuation of its work with Congress and others to implement the recommendations of the Commission's 2016 report to Congress, *Career Offender Sentencing Enhancements,* including its recommendations to revise the career offender directive at 28 U.S.C. 994(h) to focus on offenders who have committed at least one ''crime of violence'' and to adopt a uniform definition of ''crime of violence'' applicable to the guidelines and other recidivist statutory provisions.

(4) Continuation of its work with Congress and others to implement the recommendations of the Commission's 2011 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*—including its recommendations regarding the severity and scope of mandatory minimum penalties, consideration of expanding the ''safety valve'' at 18 U.S.C. 3553(f), and elimination of the mandatory ''stacking'' of penalties under 18 U.S.C. 924(c)—and preparation of a series of publications updating the data in the report.

(5) Continuation of its comprehensive, multiyear study of recidivism, including the circumstances that correlate with increased or reduced recidivism.

(6) Implementation of any legislation warranting Commission action.

(7) Study of Chapter Four, Part A (Criminal History), focusing on (A) how the guidelines treat revocations under § 4A1.2(k) for violations of conditions of supervision for conduct that does not constitute a federal, state, or local offense punishable by a term of imprisonment; and (B) whether unwarranted sentencing disparities arise under the single sentence rule at § 4A1.2(a)(2) as a result of differences in state practices.

(8) Resolution of circuit conflicts as warranted, pursuant to the

Commission's authority under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991).

(9) Consideration of other miscellaneous issues, including (A) possible amendments to the commentary of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) in light of *Koons* v. *United States,* No. 17–5716 (June 4, 2018); (B) study of the operation of § 5H1.6 (Family Ties and Responsibilities (Policy Statement)) with respect to the loss of caretaking or financial support of minors; and (C) study of whether § 1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. 3582(c)(1)(A) (Policy Statement)) effectively encourages the Director of the Bureau of Prisons to file a motion for compassionate release when ''extraordinary and compelling reasons'' exist.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2019. To the extent practicable, public comment should include the following: (1) A statement of the issue, including, where appropriate, the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

William H. Pryor Jr.,

Acting Chair.

[FR Doc. 2018–13937 Filed 6–27–18; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0821]

Agency Information Collection Activity Under OMB Review: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Documents and Information Required for Specially Adapted Housing Assistive Technology Grant) and Scoring Criteria for SAH Assistive Technology Grants

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 30, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop_.gov.* Please refer to ''OMB Control No. 2900–0821'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Office of Quality, Privacy and Risk (005R1B), Department of Veterans Affairs , 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *Cynthia.Haryey-Pryor@va.gov.* Please refer to ''OMB Control No. 2900–0821'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 11–275; 38 U.S.C. 2108; 44 U.S.C. 3501–3521.

Title: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Documents and Information Required for Specially Adapted Housing Assistive Technology Grant), VA Form 26–0967 and Scoring Criteria for SAH Assistive Technology Grants, VA Form 26–0967a.

OMB Control Number: 2900–0821.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C., chapter 21, authorizes a VA program of grants for specially adapted housing for disabled veterans or servicemembers. Section 2101(a) of this chapter specifically outlines those determinations that must be made by VA before such grant is approved for a particular veteran or servicemember. VA Form 26–0967 and VA Form 26–0967a are used to collect information that is necessary for VA to meet the requirements of 38 U.S.C. 2101(a). (Also, see 38 CFR 36.4402(a), 36–4404(a) and 36.4405.)

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 99 on May 22, 2018 and page 23767.

Affected Public: Individuals or Households.

Estimate: Annual Burden: 40 hours.

Estimated Average Burden per Respondent: 120 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–13904 Filed 6–27–18; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the North Pacific Ocean; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG144

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the North Pacific Ocean

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 Lamont-Doherty Earth Observatory of Columbia University (L–DEO) for authorization to take marine mammals incidental to a marine geophysical survey in the North Pacific Ocean. 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 authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than July 30, 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.Pauline@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: Rob Pauline, 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/node/23111.* 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.

Accordingly, NMFS plans to adopt the National Science Foundation's EA, provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing the IHA. 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 March 16, 2018, NMFS received a request from the L–DEO for an IHA to take marine mammals incidental to conducting a marine geophysical survey in the North Pacific Ocean. L–DEO submitted a revised application on June 11, 2018. On June 13, 2018 we deemed L–DEO's application for authorization to be adequate and complete. L–DEO's request is for take of small numbers of 39 species of marine mammals by Level A and Level B harassment. Underwater sound associated with airgun use may result in the behavioral harassment or auditory injury of marine mammals in the ensonified areas. Mortality is not an anticipated outcome of airgun surveys such as this, and, therefore, an IHA is appropriate. The planned activity is not expected to exceed one year, hence, we do not expect subsequent MMPA incidental harassment authorizations would be issued for this particular activity.

Description of Proposed Activity

Overview

The specified activity consists of two high-energy seismic surveys conducted at different locations in the North Pacific Ocean. Researchers from Lamont-Doherty Earth Observatory (L–DEO) and University of Hawaii, with funding from the U.S. National Science Foundation (NSF), in collaboration with researchers from United States Geological Survey (USGS), Oxford University, and GEOMAR Helmholtz Centre for Ocean Research Kiel (GEOMAR), propose to conduct the surveys from the Research Vessel (R/V) *Marcus G. Langseth* (*Langseth*) in the North Pacific Ocean. The NSF-owned *Langseth* is operated by Columbia University's L–DEO under an existing

Cooperative Agreement. The first proposed seismic survey would occur in the vicinity of the Main Hawaiian Islands, and a subsequent survey would take place at the Emperor Seamounts in 2019. The proposed timing for the Hawaii survey is summer/early fall 2018; the timing for the Emperor Seamounts survey would likely be spring/early summer 2019. Both surveys would use a 36-airgun towed array with a total discharge volume of ~6,600 in^3.

The main goal of the surveys proposed by L–DEO and the University of Hawaii is to gain fundamental insight into the formation and evaluation of Hawaiian-Emperor Seamount chain, and inform a more comprehensive assessment of geohazards for the Hawaiian Islands region.

Dates and Duration

The Hawaii survey would be expected to last for 36 days, including ~19 days of seismic operations, 11 days of equipment deployment/retrieval, ~3 days of operational contingency time (*e.g.,* weather delays, etc.), and ~3 days of transit. The *Langseth* would leave out of and return to port in Honolulu during summer (likely mid-August) 2018. The Emperor Seamounts survey would be expected to last 42 days, including ~13 days of seismic operations, ~11 days of equipment deployment/retrieval, ~5.5 days of operational contingency time, and 12.5 days of transit. The *Langseth* would leave Honolulu and return to port likely in Adak or Dutch Harbor, Alaska. The dates for this cruise have not yet been determined, although late spring/early summer 2019 is most likely.

Specific Geographic Region

The specified activity consists of two seismic surveys in the North Pacific Ocean—one at the Main Hawaiian Islands (Fig. 1 in application) and the other at the Emperor Seamounts (Fig. 2 in application). The proposed Hawaii survey would occur within ~18–24° N, ~153–160° W, and the proposed Emperor Seamounts survey would occur within ~43–48° N, ~166–173° E. The Hawaiian–Emperor Seamount chain is a mostly undersea mountain range in the Pacific Ocean that reaches above sea level in Hawaii. It is composed of the Hawaiian ridge, consisting of the islands of the Hawaiian chain northwest to Kure Atoll, and the Emperor Seamounts: Together they form a vast underwater mountain region of islands and intervening seamounts, atolls, shallows, banks and reefs along a line trending southeast to northwest beneath the northern Pacific Ocean. The seamount chain, containing over 80 identified undersea volcanoes, stretches over 5,800 kilometers (km) or 3,600 miles (mi) from the Aleutian Trench in the far northwest Pacific to the Loʻihi seamount, the youngest volcano in the chain, which lies about 35 km (22 mi) southeast of the Island of Hawaii. The Emperor Seamounts seismic survey location is located approximately 4,100 km (2,200 mi) northwest of the Hawaii seismic survey location.

Representative survey tracklines are shown in Figures 1 and 2 in the application. As described further in this document, however, some deviation in actual track lines, including order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. Thus, for the Emperor Seamounts survey, the tracklines could occur anywhere within the coordinates noted above and illustrated by the box in the inset map on Figure 2. The tracklines for the Hawaii survey could shift slightly, but would stay within the coordinates noted above and general vicinity of representative lines depicted in Figure 1. Water depths in the proposed Hawaii survey area range from ~700 to more than 5,000 m. The water depths in the Emperor Seamounts survey area range from 1,500–6,000 m. The proposed Hawaii seismic survey would be conducted within the U.S. exclusive economic zone (EEZ); the Emperor Seamounts survey would take place in International Waters.

Detailed Description of Specific Activity

The procedures to be used for the proposed surveys would be similar to those used during previous seismic surveys by L–DEO and would use conventional seismic methodology. The surveys would involve one source vessel, the *Langseth,* which is owned by NSF and operated on its behalf by Columbia University's L–DEO. The *Langseth* would deploy an array of 36 airguns as an energy source with a total volume of ~6,600 in^3. The receiving system would consist of OBSs and a single hydrophone streamer 15 km in length and OBSs. As the airgun arrays are towed along the survey lines, the hydrophone streamer would transfer the data to the on-board processing system, and the OBSs would receive and store the returning acoustic signals internally for later analysis.

The proposed study consists of two seismic surveys in the North Pacific Ocean. There would be a total of four seismic transects for the Hawaii survey—two North (N)-South (S) tracklines (Lines 1 and 2), and two East (E)-West (W) tracklines (Lines 3 and 4). An optional trackline (Line 5) could be acquired instead of Line 4 (Fig. 1). Lines 1 and 2 would be acquired twice—seismic refraction data would be acquired first, followed by multichannel seismic (MCS) reflection data. Only MCS reflection profiling would occur along Lines 3, 4, or 5. The location of the E-W tracklines (Lines 3, 4, or 5) could shift from what is currently depicted in Figure 1 depending on the science objectives; however, the E-W lines would remain in water >3,200 m deep.

The *Langseth* would first deploy 70 ocean bottom seismometers (OBS)s required for the refraction profiling—the vessel would transit from Honolulu to the north end of Line 2, deploy 35 OBSs along Line 2, ~15 km apart, and then transit to the south end of Line 1 to deploy 35 OBSs (~15 km apart) along Line 1. The streamer and airgun array would then be deployed. Refraction data would then be acquired from north to south on Line 1 followed by MCS profiling along the same line. If Lines 3 and 4 are to be surveyed (preferred option), MCS profiles would then be acquired along Line 3, followed by refraction data acquisition in a north-south direction along Line 2, followed by MCS profiles along Line 2 from south to north. The vessel would then acquire MCS profiles from the north end of Line 2 to the west end of Line 4, and along Line 4. After seismic acquisition ceases, the streamer, airgun source, and all OBSs would be recovered by the *Langseth.*

There would be three seismic transects for the Emperor Seamounts survey (Fig. 2). Data would be acquired twice along the two OBS lines—once for seismic refraction data and once for MCS reflection profiling. Only MCS reflection profiling would occur along the third transect that connects the two OBS lines. The *Langseth* would first acquire MCS reflection data for all three lines—from north to south, then along the connecting transect, and from west to east. After recovering the streamer and airgun array, the *Langseth* would deploy 32 OBSs required for the refraction profiling from east to west along the first line. After seismic acquisition along the first OBS line from west to east, the OBSs would be recovered and re-deployed along the second OBS line, which would then be surveyed from north to south. The *Langseth* would then recover all OBSs, the streamer, and the airgun array.

In addition to the operations of the airgun array, a multibeam echosounder (MBES), a sub-bottom profiler (SBP), and an Acoustic Doppler Current

Profiler (ADCP) would be operated from the *Langseth* continuously during the seismic surveys, but not during transit to and from the survey areas. All planned geophysical data acquisition activities would be conducted by L–DEO with on-board assistance by the scientists who have proposed the studies. The vessel would be self-contained, and the crew would live aboard the vessel.

During the two surveys, the *Langseth* would tow the full array, consisting of four strings with 36 airguns (plus 4 spares) and a total volume of ~6,600 in^3. The 4-string array would be towed at a depth of 12 m, and the shot intervals would range from 50 m for MCS acquisition and 150 m for OBS acquisition. To retrieve OBSs, an acoustic release transponder (pinger) is used to interrogate the instrument at a frequency of 8–11 kHz, and a response is received at a frequency of 11.5–13 kHz. The burn-wire release assembly is then activated, and the instrument is released to float to the surface from the anchor which is not retrieved.

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 the Specified Activity

Section 4 of the IHA application summarizes available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. More general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in the North Pacific Ocean and summarizes information related to the population, including regulatory status under the MMPA and ESA. Some of the populations of marine mammals considered in this document occur within the U.S. EEZ and are therefore assigned to stocks and are assessed in NMFS' Stock Assessment Reports (*www.nmfs.noaa.gov/pr/sars/*). As such, information on potential biological removal (PBR; 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) and on annual levels of serious injury and mortality from anthropogenic sources are not available for these marine mammal populations.

Twenty-eight cetacean species, including 21 odontocetes (dolphins and small- and large-toothed whales) and seven mysticetes (baleen whales), and one pinniped species, could occur in the proposed Hawaii survey area (Table 4). In the Emperor Seamounts survey area, 27 marine mammal species could occur, including 15 odontocetes (dolphins and small- and large-toothed whales), eight mysticetes (baleen whales), and four pinniped species. Some species occur in both locations. In total, 39 species are expected to occur in the vicinity of the specified activity.

Baird *et al.* (2015) described numerous Biologically Important Areas (BIAs) for cetaceans for the Hawaii region. BIAs were identified for small resident populations of cetaceans based on sighting data, photo-identification, genetics, satellite tagging, and expert opinion, and one reproductive area for humpbacks was identified as a BIA; these are described in the following section for each marine mammal species. The BIAs range from ~700–23,500 km^2 in area (Baird *et al.* 2015).

Marine mammal abundance estimates presented in this document represent the total number of individuals estimated within a particular study or survey area. All values presented in Table 1 are the most recent available at the time of publication.

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE PROPOSED SURVEY AREAS

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]	Present at time of survey (Y/N)	
							HI	Emperor Seamounts
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)								
Family Eschrichtiidae:								
Gray whale	*Eschrichtius robustus.*	Western North Pacific.	E/D; Y	140 (0.04, 135, 2011) [4]	0.06	unk	N	Y
Family Balaenidae:								
North Pacific right whale.	*Eubalaena japonica*	Eastern North Pacific.	E/D; Y	31 (0.226, 26, 2013) [6]	N/A	0	N	Y
		N/A		450 [5]				
Family Balaenopteridae (rorquals):								
Humpback whale	*Megaptera novaeangliae.*	Central North Pacific	-/-; N	10,103 (0.03, 7,890, 2006) [6].	83	25	Y	Y
		Western North Pacific.	E/D; Y	1,107 (0.30, 865,2006) [6]	3	3.2		
Minke whale	*Balaenoptera acutorostrata.*	Hawaii		UNK			N	Y
		N/A		22,000 [7]				
Bryde's whale	*(Balaenoptera edeni/brydei.*	Hawaii	-/-; N	1,751 (0.29, 1,378, 2010) [17]	13.8	0	Y	Y
		Eastern Tropical Pacific.	-/-; N—	UNK	UND			
Sei whale	*Balaenoptera borealis.*	Hawaii	E/D; Y	178 (0.9, 93, 2010) [4]	0.2	0.2	Y	Y
Fin whale	*Balaenoptera physalus physalus.*	Hawaii	E/D; Y	154 (1.05, 75, 2010) [17]	0.1	0	Y	Y
		N/A		13,620–18,680 [9]				
Blue whale	*Balaenoptera musculus musculus).*	Central North Pacific	E/D; Y	133 (1.09, 63, 2010) [17]	0.1	0	Y	Y
Superfamily Odontoceti (toothed whales, dolphins, porpoises)								
Family Physeteridae:								

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE PROPOSED SURVEY AREAS—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]	Present at time of survey (Y/N)	
							HI	Emperor Seamounts
Sperm whale	*Physeter macrocephalus.*	Hawaii	E/D; Y	4,559 (0.33, 3,478, 2010) [17]	13.9	0.7	Y	Y
		N/A	N/A	29,674 [10]–26,300 [11]				
Family Kogiidae:								
Pygmy sperm whale	*Kogia breviceps*	Hawaii	-/-; N	7,138 [4]	UND	0	Y	Y
Dwarf sperm whale	*Kogia sima*	Hawaii	-/-; N	17,519 [4]	UND	0	Y	Y
Family Ziphiidae (beaked whales):								
Cuvier's beaked whale	*Ziphius cavirostris*	Hawaii	-, -, N	723 (0.69, 428, 2010) [17]	4.3	0	Y	Y
		N/A		20,000 [12]				
Longman's beaked whale.	*Indopacetus pacificus.*	Hawaii	-, -, N	7,619 (0.66, 4,592, 2010) [17]	46	0	Y	N
Blainville's beaked whale.	*Mesoplodon densirostris.*	Hawaii	-, -, N	2,105 (1.13,1, 980, 2010) [17]	10	0	Y	N
Stejneger's beaked whale.	*Mesoplodon stejnegeri.*	Alaska	N	UNK	UND	0	N	Y
Ginkgo-toothed beaked whale.	*Mesoplodon ginkgodens.*	N/A		25,300 [12]			Rare	Absent
Deraniyagala's beaked whale.	*Mesoplodon hotaula*	N/A		25,300 [12]			Y	N
Hubb's beaked whale	*Mesoplodon carlhubbsi.*	N/A		25,300 [12]			Y	N
Baird's beaked whale	*Berardius bairdii*	N/A		10,190 [13]			N	Y
Family Delphinidae:								
Rough-toothed dolphin	*Steno bredanensis*	Hawaii	-, -, N	72,528 (0.39, 52,033, 2010) [17].	46	UNK	Common	N
Common bottlenose dolphin.	*Tursiops truncatus*	Hawaii Pelagic	-/-; N	21,815 (0.57, 13,957, 2010) [17].	140	0.2	Common	N
		Kaua'i and Ni'ihau	-/-; N	184 (0.11, 168, 2005) [4]	1.7	unk	Common	N
		O'ahu	-/-; N	743 (0.54, 485, 2006) [4]	4.9	unk	Common	N
		4 Islands Region	-/-; N	191 (0.24, 156, 2006)	unk	unk	Common	N
		Hawaii Island	-/-; N	128 (0.13, 115, 2006) [4]	1.6	unk	Common	N
Common dolphin	*Delphinus delphis*	N/A		2,963,000 [14]			N	Y
Pantropical spotted dolphin.	*Stenella attenuata*	Hawaii Pelagic	-/-; N	55,795 (0.40, 40,338, 2010) [17].	403	0	Y	N
		O'ahu	-/-; N	unk	unk	unk		
		4 Island Region	-/-; N	unk	unk	unk		
		Hawaii Island	-/-; N	unk	unk	≥ 0.2		
Spinner dolphin	*Stenella longirostris*	Hawaii Pelagic	-/-; N	unk	unk	unk	Y	N
		Hawaii Island	-/-; N	631 (0.04, 585, 2013) [4]	5.9	unk	Common	N
		O'ahu/4-Islands	-/-; N	355 (0.09, 329, 2013) [4]	3.3	unk	Y	N
Striped dolphin	*Stenella coeruleoalba.*	Hawaii	-/-; N	61,021 (0.38, 44,922, 2010) [17].	449	unk	Y	Y
		N/A		964,362 [15]				
Fraser's dolphin	*Lagenodelphis hosei*	Hawaii	-/-; N	51,491 (0.66, 31,034, 2010) [17].	310	0	Y	N
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens.*	Central North Pacific		988,333 [16]			N	Y
Northern right whale dolphin.	*Lissodelphis borealis*	N/A		307,784 [16]			N	Y
Risso's dolphin	*Grampus griseus*	Hawaii	-/-; N	11,613 (0.39, 8,210, 2010) [17].	82	0	Y	Y
		N/A		110,457 [15]				
Melon-headed whale	*Peponocephala electra.*	Hawaii	-/-; N	8,666 (1.00, 4,299, 2010) [17]	43	0	Y	N
		Kohala Resident	-/-; N	447 (0.12, 404, 2009) [4]	4	0		
Pygmy killer whale	*Feresa attenuata*	Hawaii	-/-; N	10,640 (0.53, 6,998, 2010) [17].	56	1.1	Y	N
False killer whale	*Pseudorca crassidens.*	Hawaii Insular	E/D;Y	167 (0.14, 149, 2015) [17]	0.3	0	Y	Y
		Northwest Hawaiian Islands.	-/-; N	617 (1.11, 290, 2010) [17]	2.3	0.4		
		Hawaii Pelagic	-/-; N	1,540 (0.66, 928, 2010) [17]	9.3	7.6		
		N/A		16,668 [18]				
Killer whale	*Orcinus orca*	Hawaii	-/-; N	146 (0.96, 74, 2010)	0.7	0	Y	Y
		N/A		8,500 [19]				
Short-finned pilot whale	*Globicephala macrorhynchus.*	Hawaii	-/-; N	19,503 (0.49, 13,197, 2010)	106	0.9	Y	Y
		N/A		53,608 [16]				
Family Phoenidae (porpoises):								
Dall's porpoise	*Phocoenoides dalli*	N/A		1,186,000 [20]			N	Y
Order Carnivora—Superfamily Pinnipedia								
Family Otariidae (eared seals and sea lions):								
Steller sea lion	*Eumetopias jubatus*	Western DPS	E/D; Y	50,983 (-,50,983, 2015)			N	Y
Northern fur seal	*Callorhinus ursinus*	Eastern Pacific	-/D; Y	626,734 (0.2, 530,474, 2014).	11,405	437	N	Y
		N/A		1,100,000 [5]				

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE PROPOSED SURVEY AREAS—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]	Present at time of survey (Y/N)	
							HI	Emperor Seamounts
Family Phocidae (earless seals):								
Hawaiian monk seal	*Neomonachus schauinslandi.*	Hawaii	E/D; Y	1,324 (0.03, 1,261, 2015) [17]	4.4	≥1.6	Y	N
Northern elephant seal	*Mirounga angustirostris.*			210,000–239,000 [21]			N	Y
Ribbon seal	*Histriophoca fasciata*	Alaska	-/-; N	184,000 (0.12, 163,000, 2013).	9,785	3.8	N	Y

[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; N_{min} is the minimum estimate of stock abundance.

[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.

[4]—Carretta *et al.,* 2017.
[5]—Jefferson *et al.,* 2015.
[6]—Muto *et al.,* 2017.
[7]—IWC 2018.
[8]—Central and Eastern North Pacific (Hakamada and Matsuoka 2015a).
[9]—Ohsumi and Wada, 1974.
[10]—Whitehead 2002.
[11]—Barlow and Taylor 2005.
[12]—Wade and Gerrodette 1993.
[13]—Western Pacific Ocean (Okamura *et al.,* 2012).
[14]—ETP (Gerrodette and Forcada 2002 in Hammond *et al.,* 2008b).
[15]—Gerrodette *et al.,* 2008.
[16]—North Pacific (Miyashita 1993b).
[17]—Carretta *et al.,* 2018.
[18]—Western North Pacific (Miyashita 1993a).
[19]—Ford 2009.
[20]—Buckland *et al.,* 1993.
[21]—Lowry *et al.,* 2014.
Note—Italicized species are not expected to be taken or proposed for authorization.

All species that could potentially occur in the proposed survey area are included in Table 1. With the exception of Steller sea lions, these species or stocks temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. However, the temporal and/or spatial occurrence of Steller sea lions is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. The Steller sea lion occurs along the North Pacific Rim from northern Japan to California (Loughlin *et al.* 1984). They are distributed around the coasts to the outer shelf from northern Japan through the Kuril Islands and Okhotsk Sea, through the Aleutian Islands, central Bering Sea, southern Alaska, and south to California (NMFS 2016c). There is little information available on at-sea occurrence of Steller sea lions in the northwestern Pacific Ocean. The Emperor Seamounts survey area is roughly 1,200 kilometers away from the Aleutian Islands in waters 2,000 to more than 5,000 meters deep. Steller sea lions are unlikely to occur in the proposed offshore survey area based on their known distributional range and habitat preference. Therefore, it is extremely unlikely that Steller sea lions would be exposed to the stressors associated with the proposed seismic activities and will not be discussed further.

We have reviewed L–DEO's species descriptions, including life history information, distribution, regional distribution, diving behavior, and acoustics and hearing, for accuracy and completeness. Below, for the 39 species that are likely to be taken by the activities described, we offer a brief introduction to the species and relevant stock as well as available information regarding population trends and threats, and describe any information regarding local occurrence.

Gray Whale

Two separate populations of gray whales have been recognized in the North Pacific (LeDuc *et al.* 2002): The eastern North Pacific and western North Pacific (or Korean-Okhotsk) stocks. However, the distinction between these two populations has been recently debated owing to evidence that whales from the western feeding area also travel to breeding areas in the eastern North Pacific (Weller *et al.* 2012, 2013; Mate *et al.* 2015). Thus, it is possible that whales from both the *endangered* Western North Pacific and the delisted Eastern North Pacific DPS could occur in the proposed survey area in the Emperor Seamounts survey area.

The western population is known to feed in the Okhotsk Sea along the northeast coast of Sakhalin Island (Weller *et al.* 1999, 2002a, 2008), eastern Kamchatka, and the northern Okhotsk Sea in the summer and autumn (Vladimirov *et al.* 2008). Winter breeding grounds are not known; however, it has been postulated that wintering areas occur along the south coast of the Korean Peninsula, but it is more likely that they are located in the South China Sea, along the coast of Guangdong province and Hainan (Wang 1984 and Zhu 1998 *in* Weller *et al.* 2002a; Rice 1998). Winter records exist for Japan, North Korea, and South Korea (Weller *et al.* 2002a,b). Migration into the Okhotsk Sea may occur through the Sea of Japan via the Tatar Strait and/or La Perouse Strait (see Reeves *et al.* 2008). If migration timing is similar to that of the better-known eastern gray whale, southbound migration probably occurs mainly in December–January and northbound migration mainly in February–April, with northbound migration of newborn calves and their mothers probably concentrated at the end of that period. The eastern North Pacific gray whale breeds and winters in

Baja, California, and migrates north to summer feeding grounds in the northern Bering Sea, Chukchi Sea, and western Beaufort Sea (Rice and Wolman 1971; Jefferson *et al.* 2015).

In the western North Pacific, gray whales migrate along the coast of Japan (Weller *et al.* 2008), and records have been reported there from November through August, with the majority for March through May (Weller *et al.* 2012). Although the offshore limit of this route is not well documented, gray whales are known to prefer nearshore coastal waters. However, some exchange between populations in the eastern and western North Pacific has been reported (Weller *et al.* 2012, 2013; Mate *et al.* 2015); thus, migration routes could include pelagic waters of the Pacific Ocean, including the proposed Emperor Seamounts survey area. Nonetheless, given their small population size and preference for nearshore waters, only very small numbers are likely to be encountered during the proposed Emperor Seamounts survey during any time of the year. Additionally, during summer, most gray whales would be feeding near Sakhalin Island. The gray whale does not occur in Hawaiian waters.

North Pacific Right Whale

North Pacific right whales summer in the northern North Pacific, primarily in the Okhotsk Sea (Brownell *et al.* 2001) and in the Bering Sea (Shelden *et al.* 2005; Wade *et al.* 2006). The eastern North Pacific stock that occurs in U.S. waters numbers only ~31 individuals (Wade *et al.* 2011), and critical habitat has been designated in the eastern Bering Sea and in the Gulf of Alaska, south of Kodiak Island (NMFS 2017b). Wintering and breeding areas are unknown, but have been suggested to include the Hawaiian Islands, Ryukyu Islands, and Sea of Japan (Allen 1942; Gilmore 1978; Reeves *et al.* 1978; Herman *et al.* 1980; Omura 1986). The Hawaiian Islands were not a major calving ground for right whales in the last 200 years, but mid-ocean whaling records of right whales during winter suggest that right whales may have wintered and calved far offshore in the Pacific Ocean (Scarff 1986, 1991; Clapham *et al.* 2004). In April 1996, a right whale was sighted off Maui, the first documented sighting of a right whale in Hawaiian waters since 1979 (Salden and Mickelsen 1999).

Whaling records indicate that right whales once ranged across the entire North Pacific Ocean north of 35° N and occasionally occurred as far south as 20° N (*e.g.,* Scarff 1986, 1991). In the western Pacific, most sightings in the 1900s were reported from Japanese waters, followed by the Kuril Islands, and the Okhotsk Sea (Brownell *et al.* 2001). Significant numbers of right whales have been seen in the Okhotsk Sea during the 1990s, suggesting that the adjacent Kuril Islands and Kamchatka coast are a major feeding ground (Brownell *et al.* 2001). Right whales were also seen near Chichi-jima Island (Bonin Islands), Japan, in the 1990s (Mori *et al.* 1998). During 1994–2014, right whale sightings were reported off northern Japan, the Kuril Islands, and Kamchatka during April through August, with highest densities in May and August (Matsuoka *et al.* 2015). All sightings were north of 38° N, and in July–August, the main distribution was north of 42° N (Matsuoka *et al.* 2015). Right whale sightings were made within the Emperor Seamounts survey area during August, and adjacent to the survey area during May and July (Matsuoka *et al.* 2015). Ovsyanikova *et al.* (2015) also reported right whale sightings in the western Pacific Ocean during 1977–2014; although they also reported sightings off eastern Japan, the Kuril Islands, and southeast Kamchatka, including sightings to the west of the proposed Emperor Seamounts survey area, no sightings were reported within the proposed survey area. Sekiguchi *et al.* (2014) reported several sightings just to the north and west of the proposed survey area during June 2012.

Although there are a few historical records of North Pacific right whales in Hawaiian waters (Brownell *et al.* 2001), they are very unlikely to occur in the Hawaiian survey area, especially during the summer. However, right whales could be encountered in the Emperor Seamounts survey area during spring and summer, and likely fall. Individuals that could occur there would likely be from a western North Pacific stock rather than the eastern North Pacific stock.

Humpback Whale

The humpback whale is found throughout all oceans of the World (Clapham 2009), with recent genetic evidence suggesting three separate subspecies: North Pacific, North Atlantic, and Southern Hemisphere (Jackson *et al.* 2014). Nonetheless, genetic analyses suggest some gene flow (either past or present) between the North and South Pacific (*e.g.,* Jackson *et al.* 2014; Bettridge *et al.* 2015). Although considered to be mainly a coastal species, the humpback whale often traverses deep pelagic areas while migrating (*e.g.,* Mate *et al.* 1999; Garrigue *et al.* 2015).

North Pacific humpback whales migrate between summer feeding grounds along the Pacific Rim and the Bering and Okhotsk seas, and winter calving and breeding areas in subtropical and tropical waters (Pike and MacAskie 1969; Rice 1978; Winn and Reichley 1985; Calambokidis *et al.* 2000, 2001, 2008). In the North Pacific, humpbacks winter in four different breeding areas: (1) Along the coast of Mexico; (2) along the coast of Central America; (3) around the Main Hawaiian Islands; and (4) in the western Pacific, particularly around the Ogasawara and Ryukyu islands in southern Japan and the northern Philippines (Calambokidis *et al.* 2008; Fleming and Jackson 2011; Bettridge *et al.* 2015).

Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS recently evaluated the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259, September 8, 2016). The remaining nine DPSs were not listed. There are two DPSs that occur in the action area: The Hawaii DPS, which is not listed under the ESA (81 FR 62259) and the Western North Pacific DPS which is listed as *endangered.*

The proposed seismic activity for the Emperor Seamount survey would take place in late spring or early summer 2019. Humpbacks were reported within the proposed action area in May, July, and August (Matsuoka *et al.* 2015). Based on the timing of the action, it is likely that humpback whales from the Western North Pacific DPS would be migrating north through the action area to the feeding grounds, and thus be exposed to the action. Hawaii DPS and Mexico DPS humpbacks would also be migrating north at that time of year, but due to the location of the breeding areas of these DPSs, we do not expect their migratory path to take them through the action area.

There is potential for the mixing of the western and eastern North Pacific humpback populations, as several individuals have been seen in the wintering areas of Japan and Hawaii in separate years (Darling and Cerchio 1993; Salden *et al.* 1999; Calambokidis *et al.* 2001, 2008). Whales from these wintering areas have been shown to travel to summer feeding areas in British Columbia, Canada, and Kodiak Island, Alaska (Darling *et al.* 1996;

Calambokidis *et al.* 2001), but feeding areas in Russian waters may be most important (Calambokidis *et al.* 2008). There appears to be a very low level of interchange between wintering and feeding areas in Asia and those in the eastern and central Pacific (Calambokidis *et al.* 2008; Baker *et al.* 2013).

Humpbacks use Hawaiian waters for breeding from December to April; peak abundance occurs from late-February to early-April (Mobley *et al.* 2001). Most humpbacks have been sighted there in water depths <180 m (Fleming and Jackson 2011), but Frankel *et al.* (1995) detected singers up to 13 km from shore at depths up to 550 m. During vessel-based line-transect surveys in the Hawaiian Islands EEZ in July–December 2002, one humpback whale was sighted on 21 November at ~20.3° N, 154.9° W just north of the Island of Hawaii (Barlow *et al.* 2004). Another sighting was made during summer–fall 2010 surveys, but the date and location of that sighting were not reported (Bradford *et al.* 2017).

The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) was established in 1992 by the U.S. Congress to protect humpback whales and their habitat in Hawaii (NOAA 2018a). The sanctuary provides essential breeding, calving, and nursing areas necessary for the long-term recovery of the North Pacific humpback whale population. The HIHWNMS provides protection to humpbacks in the shallow waters (from the shoreline to a depth of 100 fathoms or 183 m) around the four islands area of Maui, Penguin Bank; off the north shore of Kauai, the north and south shores of Oahu, and the north Kona and Koahal coast of the island of Hawaii (NOAA 2018a). These areas, as well as some of the waters surrounding them, are also considered breeding BIAs (Baird *et al.* 2015). The proposed seismic lines are located at least 10 km from the HIHWNMS (Fig. 1). However, humpback whales are not expected to be encountered in the Hawaiian survey area during the summer.

During Japanese surveys in the western North Pacific from 1994–2014, humpbacks were seen off northern Japan, the Kuril Islands, and Kamchatka (Miyashita 2006; Matsuoka *et al.* 2015). Sightings were reported for the months of April through September, with lowest densities in April and September (Matsuoka *et al.* 2015). In May and June, sightings were concentrated east of northern Japan between 37° and 43° N; concentrations moved north of 45°N during July and August, off the Kuril Islands and Kamchatka (Mutsuoka *et al.* 2015). Humpback whales were encountered within the proposed Emperor Seamount study area in May, July, and August (Matsuoka *et al.* 2015).

Thus, humpbacks could be encountered in the Emperor Seamounts survey area during spring and summer, as individuals are migrating to northern feeding grounds at that time. They could also be encountered in the survey area during fall, on their southbound migration. Humpback whale occurrences in the Hawaii survey area during the time of the proposed survey would be rare.

Bryde's Whale

Bryde's whale occurs in all tropical and warm temperate waters in the Pacific, Atlantic, and Indian oceans, between 40° N and 40° S (Kato and Perrin 2009). It is one of the least known large baleen whales, and its taxonomy is still under debate (Kato and Perrin 2009). *B. brydei* is commonly used to refer to the larger form or ''true'' Bryde's whale and *B. edeni* to the smaller form; however, some authors apply the name *B. edeni* to both forms (Kato and Perrin 2009). Although there is a pattern of movement toward the Equator in the winter and the poles during the summer, Bryde's whale does not undergo long seasonal migrations, remaining in warm (≥16° C) water year-round (Kato and Perrin 2009). Bryde's whales are known to occur in both shallow coastal and deeper offshore waters (Jefferson *et al.* 2015).

In the Pacific United States, a Hawaii and an Eastern Tropical Pacific stock are recognized (Carretta *et al.* 2017). In Hawaii, Bryde's whales are typically seen offshore (*e.g.,* Barlow *et al.* 2004; Barlow 2006), but Hopkins *et al.* (2009) reported a Bryde's whale within 70 km of the Main Hawaiian Islands. During summer–fall surveys of the Hawaiian Islands EEZ, 13 sightings were made in 2002 (Barlow 2006), and 32 sightings were reported during 2010 (Bradford *et al.* 2017). Bryde's whales were primarily sighted in the western half of the Hawaiian Islands EEZ, with the majority of sightings associated with the Northwestern Hawaiian Islands; none was made in the proposed survey area (Barlow *et al.* 2004; Barlow 2006; Bradford *et al.* 2013; Forney *et al.* 2015; Carretta *et al.* 2017).

Bryde's whales have been regularly seen during Japanese summer sighting surveys in the western North Pacific, south of 43° S (Hakamada *et al.* 2009, 2017), and individual movements have been tracked with satellite tags in offshore waters off Japan (Murase *et al.* 2016). No recent sightings have been made in the proposed Emperor Seamounts survey area, but commercial catches have been reported there (IWC 2007a).

Limited numbers of Bryde's whale could occur in the Emperor Seamounts survey area, but its distributional range is generally to the south of this region. However, it could occur in the Hawaiian survey area at any time of the year.

Common Minke Whale

The common minke whale has a cosmopolitan distribution ranging from the tropics and subtropics to the ice edge in both hemispheres (Jefferson *et al.* 2015). In the Northern Hemisphere, minke whales are usually seen in coastal areas, but can also be seen in pelagic waters during northward migrations in spring and summer, and southward migration in autumn (Stewart and Leatherwood 1985). In the North Pacific, the summer range extends to the Chukchi Sea; in the winter, minke whales move further south to within 2° of the Equator (Perrin and Brownell 2009). The International Whaling Commission (IWC) recognizes three stocks in the North Pacific: The Sea of Japan/East China Sea, the rest of the western Pacific west of 180° N, and the remainder of the Pacific (Donovan 1991).

In U.S. Pacific waters, three stocks are recognized: Alaska, Hawaii, and California/Oregon/Washington stocks (Carretta *et al.* 2017). In Hawaii, the minke whale is thought to occur seasonally from November through March (Rankin and Barlow 2005). It is generally believed to be uncommon in Hawaiian waters; however, several studies using acoustic detections suggest that minke whales may be more common than previously thought (Rankin *et al.* 2007; Oswald *et al.* 2011). Acoustic detections have been recorded around the Hawaiian Islands during fall–spring surveys in 1997 and 2000–2006 (Rankin and Barlow 2005; Barlow *et al.* 2008; Rankin *et al.* 2008), and from seafloor hydrophones positioned ~50 km from the coast of Kauai during February–April 2006. Similarly, passive acoustic detections of minke whales have been recorded at the ALOHA station (22.75° N, 158° W) from October–May for decades (Oswald *et al.* 2011).

A lack of sightings is likely related to misidentification or low detection capability in poor sighting conditions (Rankin *et al.* 2007). Two minke whale sightings were made west of 167° W, one in November 2002 and one in October 2010, during surveys of the Hawaiian Islands EEZ (Barlow *et al.* 2004; Bradford *et al.* 2013; Carretta *et al.* 2017). Numerous additional sightings in

the EEZ were made by observers on Hawaii-based longline fishing vessels, including four near the proposed survey area to the north and south of the Main Hawaiian Islands (Carretta *et al.* 2017).

Minke whales have been seen regularly during Japanese sighting surveys in the western North Pacific during summer (Miyashita 2006; Hakamada *et al.* 2009), and one sighting was made in August 2010 in offshore waters off Japan during the Shatsky Rise cruise (Holst and Beland 2010). Minke whales were sighted within the Emperor Seamounts survey area in the greatest numbers in August, with the lowest numbers occurring during May and June (Hakamada *et al.* 2009).

Thus, minke whales could be encountered in the Emperor Seamounts survey area during spring and summer, and likely fall, and could occur in limited numbers in the Hawaiian survey area during the summer.

Sei Whale

The sei whale occurs in all ocean basins (Horwood 2009), but appears to prefer mid-latitude temperate waters (Jefferson *et al.* 2015). It undertakes seasonal migrations to feed in subpolar latitudes during summer and returns to lower latitudes during winter to calve (Horwood 2009). The sei whale is pelagic and generally not found in coastal waters (Harwood and Wilson 2001). It occurs in deeper waters characteristic of the continental shelf edge region (Hain *et al.* 1985) and in other regions of steep bathymetric relief such as seamounts and canyons (Kenney and Winn 1987; Gregr and Trites 2001).

During summer in the North Pacific, the sei whale can be found from the Bering Sea to the Gulf of Alaska and down to southern California, as well as in the western Pacific from Japan to Korea. In the U.S. Pacific, an Eastern North Pacific and a Hawaii stock are recognized (Carretta *et al.* 2017). In Hawaii, the occurrence of sei whales is considered rare (DoN 2005). However, six sightings were made during surveys in the Hawaiian Islands EEZ in July–December 2002 (Barlow 2006), including several along the north coasts of the Main Hawaiian Islands (Barlow *et al.* 2004). All sightings occurred in November, with one sighting reported near proposed seismic Line 3 north of Hawaii Island (Barlow *et al.* 2004). Bradford *et al.* (2017) reported two sightings in the northwestern portion of the Hawaiian Islands EEZ during summer–fall surveys in 2010. Hopkins *et al.* (2009) sighted one group of three subadult sei whales northeast of Oahu in November 2007. Sei whale vocalizations were also detected near Hawaii during November 2002 (Rankin and Barlow 2007). Breeding and calving areas for this species in the Pacific are unknown, but those sightings suggest that Hawaii may be an important reproductive area (Hopkins *et al.* 2009).

Sei whales have been regularly seen during Japanese surveys during the summer in the western North Pacific (Miyashita 2006; Hakamada *et al.* 2009; Sasaki *et al.* 2013). Sei whales have been sighted in and near the Emperor Seamounts survey area, with the greatest numbers reported for July and August; few sightings were made during May and June (Hakamada *et al.* 2009).

Thus, sei whales could be encountered in both the Emperor Seamounts and Hawaii survey areas during spring and summer.

Fin Whale

The fin whale is widely distributed in all the World's oceans (Gambell 1985), although it is most abundant in temperate and cold waters (Aguilar 2009). Nonetheless, its overall range and distribution are not well known (Jefferson *et al.* 2015). A recent review of fin whale distribution in the North Pacific noted the lack of sightings across the pelagic waters between eastern and western winter areas (Mizroch *et al.* 2009). The fin whale most commonly occurs offshore, but can also be found in coastal areas (Aguilar 2009). Most populations migrate seasonally between temperate waters where mating and calving occur in winter, and polar waters where feeding occurs in summer (Aguilar 2009). However, recent evidence suggests that some animals may remain at high latitudes in winter or low latitudes in summer (Edwards *et al.* 2015).

The fin whale is known to use the shelf edge as a migration route (Evans 1987). Sergeant (1977) suggested that fin whales tend to follow steep slope contours, either because they detect them readily, or because the contours are areas of high biological productivity. However, fin whale movements have been reported to be complex (Jefferson *et al.* 2015). Stafford *et al.* (2009) noted that sea-surface temperature is a good predictor variable for fin whale call detections in the North Pacific.

North Pacific fin whales summer from the Chukchi Sea to California and winter from California southwards (Gambell 1985). In the U.S., three stocks are recognized in the North Pacific: California/Oregon/Washington, Hawaii, and Alaska (Northeast Pacific) (Carretta *et al.* 2017). Information about the seasonal distribution of fin whales in the North Pacific has been obtained from the detection of fin whale calls by bottom-mounted, offshore hydrophone arrays along the U.S. Pacific coast, in the central North Pacific, and in the western Aleutian Islands (Moore *et al.* 1998, 2006; Watkins *et al.* 2000a,b; Stafford *et al.* 2007, 2009). Fin whale calls are recorded in the North Pacific year-round, including near the Emperor Seamounts survey area (*e.g.,* Moore *et al.* 2006; Stafford *et al.* 2007, 2009; Edwards *et al.* 2015). In the central North Pacific, call rates peak during fall and winter (Moore *et al.* 1998, 2006; Watkins *et al.* 2000a,b).

Sightings of fin whales have been made in Hawaiian waters during fall and winter (Edwards *et al.* 2015), but fin whales are generally considered uncommon at that time (DoN 2005). During spring and summer, their occurrence in Hawaii is considered rare (DoN 2005; see Edwards *et al.* 2015). There were five sightings of fin whales during summer–fall surveys in 2002, with sightings during every month except August (Barlow *et al.* 2004). Most sightings were made to the northwest of the Main Hawaiian Islands; one sighting was made during October southeast of Oahu (Barlow *et al.* 2004). Two sightings were made in the Northwestern Hawaiian Islands during summer–fall 2010 (Carretta *et al.* 2017; Bradford *et al.* 2017). Two additional sightings in the EEZ were made by observers on Hawaii-based longline fishing vessels, including one near proposed seismic Line 3 north of Maui (Carretta *et al.* 2017). Fin whale vocalizations have also been detected in Hawaiian waters, mainly during winter (Oleson *et al.* 2014, 2016).

In the western Pacific, fin whales are seen off northern Japan, the Kuril Islands, and Kamchatka during the summer (Miyashita 2006; Matsuoka *et al.* 2015). During Japanese sightings surveys in the western North Pacific from 1994–2014, the fin whale was sighted more frequently than the blue, humpback, or right whale (Matsuoka *et al.* 2015). During May–June, main distribution areas occurred from 35–40° N and moved north of 40° N during July and August; high densities were reported north of 45° N (Matsuoka *et al.* 2015). During these surveys, fin whales were seen in the proposed Emperor Seamounts survey area from May through September, with most sightings during August (Matsuoka *et al.* 2015). Summer sightings in the survey area during 1958–2000 were also reported by Mizroch *et al.* (2009) and during July–September 2005 (Miyashita 2006). Edwards *et al.* (2015) reported fin whale sightings within or near the Emperor

Seamounts survey area from spring through fall.

Thus, fin whales could be encountered in the Emperor Seamounts survey area from spring through fall, and could occur in the Hawaiian survey area during summer in limited numbers.

Blue Whale

The blue whale has a cosmopolitan distribution and tends to be pelagic, only coming nearshore to feed and possibly to breed (Jefferson *et al.* 2015). Blue whale migration is less well defined than for some other rorquals, and their movements tend to be more closely linked to areas of high primary productivity, and hence prey, to meet their high energetic demands (Branch *et al.* 2007). Generally, blue whales are seasonal migrants between high latitudes in the summer, where they feed, and low latitudes in the winter, where they mate and give birth (Lockyer and Brown 1981). Some individuals may stay in low or high latitudes throughout the year (Reilly and Thayer 1990; Watkins *et al.* 2000b).

In the North Pacific, blue whale calls are detected year-round (Stafford *et al.* 2001, 2009; Moore *et al.* 2002, 2006; Monnahan *et al.* 2014). Stafford *et al.* (2009) reported that sea-surface temperature is a good predictor variable for blue whale call detections in the North Pacific. Although it has been suggested that there are at least five subpopulations in the North Pacific (Reeves *et al.* 1998), analysis of calls monitored from the U.S. Navy Sound Surveillance System (SOSUS) and other offshore hydrophones (*e.g.,* Stafford *et al.* 1999, 2001, 2007; Watkins *et al.* 2000a; Stafford 2003) suggests that there are two separate populations: One in the eastern and one in the central North Pacific (Carretta *et al.* 2017). The Eastern North Pacific Stock includes whales that feed primarily off California from June–November and winter off Central America (Calambokidis *et al.* 1990; Mate *et al.* 1999). The Central North Pacific Stock feeds off Kamchatka, south of the Aleutians and in the Gulf of Alaska during summer (Stafford 2003; Watkins *et al.* 2000b), and migrates to the western and central Pacific (including Hawaii) to breed in winter (Stafford *et al.* 2001; Carretta *et al.* 2017). The status of these two populations could differ substantially, as little is known about the population size in the western North Pacific (Branch *et al.* 2016).

Blue whales are considered rare in Hawaii (DoN 2005). However, call types from both stocks have been recorded near Hawaii during August–April, although eastern calls were more prevalent; western calls were mainly detected during December–March, whereas eastern calls peaked during August and September and were rarely heard during October–March (Stafford *et al.* 2001). No sightings were made in the Hawaiian Islands EEZ during surveys in July–December 2002 (Barlow *et al.* 2004; Barlow 2006). One sighting was made in the Northwestern Hawaiian Islands during August–October 2010 (Bradford *et al.* 2013). Three additional sightings in the EEZ were made by observers on Hawaii-based longline fishing vessels during 1994–2009, including one in offshore waters north of Maui (Carretta *et al.* 2017).

In the western North Pacific, blue whale calls have been detected throughout the year, but are more prevalent from July–December (Stafford *et al.* 2001). Numerous blue whale sightings have also been made in the western North Pacific during Japanese surveys during 1994–2014 (Miyashita 2006; Matsuoka *et al.* 2015). A northward migration pattern was evident, with the main distribution occurring from 35–40° N during May and June, and north of 40° N during July and August (Matsuoka *et al.* 2015). High densities were reported north of 45° N (Matsuoka *et al.* 2015). Blue whales were seen in the proposed Emperor Seamounts survey area during August and September and adjacent to the area during May and July (Matsuoka *et al.* 2015).

Thus, blue whales could be encountered in the Emperor Seamounts and Hawaii survey areas at any time of the year, but are more likely to occur in the Emperor Seamounts area during summer, and in the Hawaii survey area during winter.

Sperm Whale

The sperm whale is the largest of the toothed whales, with an extensive worldwide distribution from the edge of the polar pack ice to the Equator (Whitehead 2009). Sperm whale distribution is linked to its social structure: Mixed groups of adult females and juveniles of both sexes generally occur in tropical and subtropical waters at latitudes less than ~40° (Whitehead 2009). After leaving their female relatives, males gradually move to higher latitudes with the largest males occurring at the highest latitudes and only returning to tropical and subtropical regions to breed. Sperm whales generally are distributed over large areas that have high secondary productivity and steep underwater topography, in waters at least 1000 m deep (Jaquet and Whitehead 1996). They are often found far from shore, but can be found closer to oceanic islands that rise steeply from deep ocean waters (Whitehead 2009).

Sperm whale vocalizations have been recorded throughout the Central and Western Pacific Ocean (Merkens *et al.* 2016). Sperm whales are widely distributed in Hawaiian waters throughout the year (Mobley *et al.* 2000) and are considered a separate stock from the Oregon/Washington/California stock in U.S. waters (Carretta *et al.* 2017). Higher densities occur in deep, offshore waters (Forney *et al.* 2015). During summer–fall surveys of the Hawaiian Islands EEZ, 43 sightings were made in 2002 (Barlow 2006) and 41 were made in 2010 (Bradford *et al.* 2013). Sightings were widely distributed across the EEZ during both surveys; numerous sightings occurred in and near the proposed survey area (Barlow *et al.* 2004; Barlow 2006; Bradford *et al.* 2017). All sightings during surveys of the Main Hawaiian Islands in 2000–2012 were made in water >1000 m in depth, with most sightings in areas >3000 m deep (Baird *et al.* 2013). Sightings were made during surveys of the Island of Hawaii during all seasons, including near proposed seismic Line 1; no sightings were made off Oahu (Baird *et al.* 2013). Sperm whales were also detected acoustically off the west coast of the Hawaii Island year-round (Klinck *et al.* 2012; Giorli *et al.* 2016).

Sperm whales have been regularly seen in the western North Pacific during Japanese surveys during summer (Miyashita 2006; Hakamada *et al.* 2009), and sightings were also made in offshore waters east of Japan and on the Shatsky Rise during a summer survey in 2010 (Holst and Beland 2010). During winter, few sperm whales are observed off the east coast of Japan (Kato and Miyashita 1998). Sperm whales have been sighted in and near the Emperor Seamounts survey area from May through August, with the greatest numbers occurring there during June–August (Miyashita 2006; Hakamada *et al.* 2009).

Thus, sperm whales could be encountered in the Emperor Seamounts and Hawaii survey areas at any time of the year.

Pygmy and Dwarf Sperm Whales

The pygmy and dwarf sperm whales are distributed widely throughout tropical and temperate seas, but their precise distributions are unknown because much of what we know of the species comes from strandings (McAlpine 2009). It has been suggested that the pygmy sperm whale is more temperate and the dwarf sperm whale

more tropical, based at least partially on live sightings at sea from a large database from the Eastern Tropical Pacific or ETP (Wade and Gerrodette 1993). *Kogia* spp. are difficult to sight at sea, because of their dive behavior and perhaps because of their avoidance reactions to ships and behavior changes in relation to survey aircraft (Würsig *et al.* 1998). Although there are few useful estimates of abundance for pygmy or dwarf sperm whales anywhere in their range, they are thought to be fairly common in some areas.

Both *Kogia* species are sighted primarily along the continental shelf edge and slope and over deeper waters off the shelf (Hansen *et al.* 1994; Davis *et al.* 1998; Jefferson *et al.* 2015). However, several studies have suggested that pygmy sperm whales live mostly beyond the continental shelf edge, whereas dwarf sperm whales tend to occur closer to shore, often over the continental shelf (Rice 1998; Wang *et al.* 2002; MacLeod *et al.* 2004). On the other hand, McAlpine (2009) and Barros *et al.* (1998) suggested that dwarf sperm whales could be more pelagic and dive deeper than pygmy sperm whales.

Vocalizations of *Kogia* spp. have been recorded in the North Pacific Ocean (Merkens *et al.* 2016). An insular resident population of dwarf sperm whales occurs within ~20 km from the Main Hawaiian Islands throughout the year (Baird *et al.* 2013; Oleson *et al.* 2013). During small-boat surveys in 2000–2012, dwarf sperm whales were sighted in all water depth categories up to 5000 m deep, but the highest sighting rates were in water 500–1,000 m deep (Baird *et al.* 2013). Of a total of 74 sightings during those surveys, most sightings were made off the Island of Hawaii, including near proposed seismic Line 1 (Baird *et al.* 2013). The area off the west coast of the Island of Hawaii is considered a BIA for dwarf sperm whales (Baird *et al.* 2015). Only one sighting was made off Oahu (Baird *et al.* 2013).

Only five sightings of pygmy sperm whales were made during the surveys, including several off the west coast of the Island of Hawaii; the majority of sightings were made in water >3,000 m deep (Baird *et al.* 2013). The dwarf sperm whale was one of the most abundant species during a summer–fall survey of the Hawaiian EEZ in 2002 (Barlow 2006); during that survey, two sightings of pygmy sperm whales, five sightings of dwarf sperm whales, and one sighting of an unidentified *Kogia* sp. were made. All sightings were made in the western portion of the EEZ (Barlow *et al.* 2004; Barlow 2006). During summer–fall surveys of the Hawaiian EEZ in 2010, one dwarf sperm whale and one unidentified *Kogia* sp. were sighted (Bradford *et al.* 2017); no sightings were made in or near the proposed survey area (Carretta *et al.* 2017).

Although *Kogia* spp. have been seen during Japanese sighting surveys in the western North Pacific in August–September (Kato *et al.* 2005), to the best of our knowledge, there are no direct data available for the Emperor Seamounts survey area with respect to *Kogia* spp. It is possible that *Kogia* spp could occur at both survey locations is limited numbers.

Cuvier's Beaked Whale

Cuvier's beaked whale is the most widespread of the beaked whales, occurring in almost all temperate, subtropical, and tropical waters and even some sub-polar and polar waters (MacLeod *et al.* 2006). It is likely the most abundant of all beaked whales (Heyning and Mead 2009). Cuvier's beaked whale is found in deep water over and near the continental slope (Jefferson *et al.* 2015).

Cuvier's beaked whale has been sighted during surveys in Hawaii (Barlow 2006; Baird *et al.* 2013; Bradford *et al.* 2017). Resighting and telemetry data suggest that a resident insular population of Cuvier's beaked whale may exist in Hawaii, distinct from offshore, pelagic whales (*e.g.* McSweeney *et al.* 2007; Baird *et al.* 2013; Oleson *et al.* 2013). During small-boat surveys around the Hawaiian Islands in 2000–2012, sightings were made in water depths of 500–4,000 m off the west coast of the Island of Hawaii during all seasons (Baird *et al.* 2013). The waters around the Island of Hawaii are considered a BIA for Cuvier's beaked whale (Baird *et al.* 2015); proposed seismic Line 1 would traverse this area.

During summer–fall surveys of the Hawaiian Islands EEZ, three sightings of Cuvier's beaked whale were made in the western portion of the EEZ in 2002 (Barlow 2006) and 23 were made in the EEZ in 2010 (Bradford *et al.* 2013). It was one of the most abundant cetacean species sighted in 2002 (Barlow 2006). In 2010, most sightings were made in nearshore waters of the Northwestern Hawaiian Islands, but one was made on the west coast of the Island of Hawaii, and another was made far offshore and to the southwest of Kauai (Carretta *et al.* 2017). Cuvier's beaked whales were also reported near proposed seismic line 1 during November 2009 (Klinck *et al.* 2012). They have also been detected acoustically at hydrophones deployed near the Main Hawaiian Islands during spring and fall (Baumann-Pickering *et al.* 2014, 2016), including off the west coast of the Island of Hawaii (Klinck *et al.* 2012). Probable acoustic detections were also made at Cross Seamount, south of the Main Hawaiian Islands, at 18.72° N, 158.25° W (Johnston 2008).

Cuvier's beaked whale has been seen during Japanese sighting surveys in August–September in the western North Pacific (Kato *et al.* 2005). It has also been detected acoustically in the Aleutian Islands (Baumann-Pickering *et al.* 2014). There is very little information on this species for the Emperor Seamounts survey area, but what is known of its distribution and habitat preferences suggests that it could occur there. Therefore, Cuvier's beaked whales could occur at both survey locations.

Longman's Beaked Whale

Longman's beaked whale, also known Indo-Pacific beaked whale, used to be one of the least known cetacean species, but it is now one of the more frequently sighted beaked whales (Pitman 2009a). Longman's beaked whale occurs in tropical waters throughout the Indo-Pacific, with records from 30° S to 40° N (Pitman 2009a). Longman's beaked whale is most often sighted in waters with temperatures ≥26°C and depth >2,000 m, and sightings have also been reported along the continental slope (Anderson *et al.* 2006; Pitman 2009a).

During small-boat surveys around the Hawaiian Islands in 2000–2012, a single sighting of Longman's beaked whale was made off the west coast of the Island of Hawaii during summer (Baird *et al.* 2013). During summer–fall surveys of the Hawaiian Islands EEZ, one sighting was made in 2002 and three were made in 2010; one sighting was made in offshore waters southwest of Ohau, and another was made at the edge of the EEZ southwest of the Island of Hawaii (Barlow *et al.* 2004; Barlow 2006; Bradford *et al.* 2013). Acoustic detections have been made at the Palmyra Atoll and the Pearl and Hermes Reef (Baumann-Pickering *et al.* 2014).

Longman's beaked whale has been seen during Japanese sighting surveys in August–September in the western North Pacific (Kato *et al.* 2005). However, what is known about its distribution and habitat preferences suggests that it does not occur in the Emperor Seamounts survey area.

Blainville's Beaked Whale

Blainville's beaked whale is found in tropical and warm temperate waters of all oceans (Pitman 2009b). It has the widest distribution throughout the world of all mesoplodont species and appears to be common (Pitman 2009b).

It is commonly sighted in some areas of Hawaii (Jefferson *et al.* 2015).

McSweeney *et al.* (2007), Schorr *et al.* (2009), Baird *et al.* (2013), and Oleson *et al.* (2013) have suggested the existence of separate insular and offshore Blainville's beaked whales in Hawaiian waters. During small-boat surveys around the Hawaiian Islands in 2000–2012, sightings were made in shelf as well as deep water, with the highest sighting rates in water 3500–4000 m deep, followed by water 500–1000 m deep (Baird *et al.* 2013). Sightings were made during all seasons off the island of Hawaii, as well as off Oahu (Baird *et al.* 2013). The area off the west coast of Hawaii Island is considered a BIA for Blainville's beaked whale (Baird *et al.* 2015); proposed seismic Line 1 would traverse this BIA. During summer–fall shipboard surveys of the Hawaiian Islands EEZ, three sightings were made in 2002 and two were made in 2010, all in the western portion of the EEZ (Barlow *et al.* 2004; Barlow 2006; Bradford *et al.* 2013). In addition, there were four sightings of unidentified *Mesoplodon* there in 2002 (Barlow *et al.* 2004; Barlow 2006) and 10 in 2010 (Bradford *et al.* 2013).

Blainville's beaked whales have also been detected acoustically at hydrophones deployed near the Main Hawaiian Islands throughout the year (Baumann-Pickering *et al.* 2014, 2016; Henderson *et al.* 2016; Manzano-Roth *et al.* 2016), including off the west coast of the Island of Hawaii, near proposed seismic Line 1, during October–November 2009 (Klinck *et al.* 2012). Probable acoustic detections were also made at Cross Seamount, south of the Main Hawaiian Islands, at 18.72° N, 158.25° W (Johnston 2008). Blainville's beaked whale is expected to be absent from the Emperor Seamounts survey area.

Stejneger's Beaked Whale

Stejneger's beaked whale occurs in subarctic and cool temperate waters of the North Pacific (Mead 1989). Most records are from Alaskan waters, and the Aleutian Islands appear to be its center of distribution (Mead 1989). In the western Pacific Ocean, Stejneger's beaked whale has been seen during Japanese sighting surveys during August–September (Kato *et al.* 2005). Seasonal peaks in strandings along the western coast of Japan suggest that this species may migrate north in the summer from the Sea of Japan (Mead 1989). They have also been detected acoustically in the Aleutian Islands during summer, fall, and winter (Baumann-Pickering *et al.* 2014).

Given its distributional range (see Jefferson *et al.* 2015), Stejneger's beaked whale could occur in the Emperor Seamounts survey area. It does not occur in the Hawaiian survey area.

Ginkgo-Toothed Beaked Whale

Ginkgo-toothed beaked whale is only known from stranding and capture records (Mead 1989; Jefferson *et al.* 2015). It is hypothesized to occupy tropical and warm temperate waters of the Indian and Pacific oceans (Pitman 2009b). Its distributional range in the North Pacific extends from Japan to the Galapagos Islands, and there are also records for the South Pacific as far south as Australia and New Zealand (Jefferson *et al.* 2015). Although its distributional range is thought to be south of Hawaii (Jefferson *et al.* 2015), vocalizations likely from this species have been detected acoustically at hydrophones deployed near the Main Hawaiian Islands and just to the south at Cross Seamount (18.72° N, 158.25° W), as well as at the Wake Atoll and Mariana Islands (Baumann-Pickering *et al.* 2014, 2016). However, no sightings have been made in Hawaiian waters (Barlow 2006; Baird *et al.* 2013; Bradford *et al.* 2017).

The ginkgo-toothed beaked whale could occur in the southern parts of the Hawaiian survey area, but it is not expected to occur in the Emperor Seamounts survey area.

Deraniyagala's Beaked Whale

Deraniyagala's beaked whale is a newly recognized species of whale that recently has been described for the tropical Indo-Pacific, where it is thought to occur between ~15° N and ~10° S (Dalebout *et al.* 2014). Strandings have been reported for the Maldives, Sri Lanka, the Seychelles, Kiribati, and Palmyra Atoll (Dalebout *et al.* 2014), and acoustic detections have been made at Palmyra Atoll and Kingman Reef in the Line Islands (Baumann-Pickering *et al.* 2014). It is closely related to ginkgo-toothed beaked whale, but DNA and morphological data have shown that the two are separate species (Dalebout *et al.* 2014).

Although possible, Deraniyagala's beaked whale is unlikely to occur in the Hawaiian survey area, and its range does not include the Emperor Seamounts survey area.

Hubb's Beaked Whale

Hubb's beaked whale occurs in temperate waters of the North Pacific (Mead 1989). Most of the stranding records are from California (Willis and Baird 1998). Its distribution appears to be correlated with the deep subarctic current (Mead *et al.* 1982). Its range is believed to be continuous across the North Pacific (Macleod *et al.* 2006), although this has yet to be substantiated because very few direct at-sea observations exist.

Hubb's beaked whale was seen during Japanese sighting surveys in the western North Pacific during August–September (Kato *et al.* 2005). However, there is very little information on this species for the Emperor Seamounts survey area, but what is known of its distribution suggests it would occur in limited numbers. The Hubb's beaked whale is unlikely to occur in the Hawaiian survey area.

Baird's Beaked Whale

Baird's beaked whale has a fairly extensive range across the North Pacific north of 30° N, and strandings have occurred as far north as the Pribilof Islands (Rice 1986). Two forms of Baird's beaked whales have been recognized—the common slate-gray form and a smaller, rare black form (Morin *et al.* 2017). The gray form is seen off Japan, in the Aleutians, and on the west coast of North America, whereas the black from has been reported for northern Japan and the Aleutians (Morin *et al.* 2017). Recent genetic studies suggest that the black form could be a separate species (Morin *et al.* 2017).

Baird's beaked whale is currently divided into three distinct stocks: Sea of Japan, Okhotsk Sea, and Bering Sea/eastern North Pacific (Balcomb 1989; Reyes 1991). The whales occur year-round in the Okhotsk Sea and Sea of Japan (Kasuya 2009). Baird's beaked whales sometimes are seen close to shore, but their primary habitat is over or near the continental slope and oceanic seamounts in waters 1,000–3,000 m deep (Jefferson *et al.* 1993; Kasuya and Ohsumi 1984; Kasuya 2009).

Off Japan's Pacific coast, Baird's beaked whales start to appear in May, numbers increase over the summer, and decrease toward October (Kasuya 2009). During this time, they are nearly absent in offshore waters (Kasuya 2009). Kato *et al.* (2005) also reported the presence of Baird's beaked whales in the western North Pacific in August–September. They have also been detected acoustically in the Aleutian Islands (Baumann-Pickering *et al.* 2014).

Baird's beaked whale could be encountered at the Emperor Seamounts survey area, but its distribution does not include Hawaiian waters.

Rough-Toothed Dolphin

The rough-toothed dolphin is distributed worldwide in tropical to

warm temperate oceanic waters (Miyazaki and Perrin 1994; Jefferson 2009). In the Pacific, it occurs from central Japan and northern Australia to Baja California, Mexico, and southern Peru (Jefferson 2009). It generally occurs in deep, oceanic waters, but can be found in shallower coastal waters in some regions (Jefferson *et al.* 2015).

The rough-toothed dolphin is expected to be one of the most abundant cetaceans in the Hawaiian survey area, based on previous surveys in the area (Barlow *et al.* 2004; Barlow 2006; Baird *et al.* 2013; Bradford *et al.* 2017). Higher densities are expected to occur in deeper waters around the Hawaiian Islands than in far offshore waters of the Hawaiian EEZ (Forney *et al.* 2015). During small-boat surveys around the Hawaiian Islands in 2000–2012, it was sighted in water as deep as 5,000 m, with the highest sighting rates in water >3500 m deep, throughout the year (Baird *et al.* 2013). Sightings were made off the Island of Hawaii as well as Oahu (Baird *et al.* 2013). The area west of the Island of Hawaii is considered BIA (Baird *et al.* 2015); proposed seismic Line 1 would traverse this area. During summer–fall surveys of the Hawaiian Islands EEZ, rough-toothed dolphins were observed throughout the EEZ, including near the proposed survey area to the north and south of the Main Hawaiian Islands; in total, there were 18 sightings in 2002 and 24 sightings in 2010 (Barlow 2006; Barlow *et al.* 2004; Bradford *et al.* 2017). Acoustic detections have also been made in Hawaiian waters (Rankin *et al.* 2015).

In the western North Pacific Ocean, rough-toothed dolphins have been seen during Japanese sighting surveys during August–September (Kato *et al.* 2005). However, there is very little information on this species for the Emperor Seamounts survey area, but what is known of its distribution suggests that it is unlikely to occur there.

Common Bottlenose Dolphin

The bottlenose dolphin occurs in tropical, subtropical, and temperate waters throughout the World (Wells and Scott 2009). Generally, there are two distinct bottlenose dolphin ecotypes, one mainly found in coastal waters and one mainly found in oceanic waters (Duffield *et al.* 1983; Hoelzel *et al.* 1998; Walker *et al.* 1999). As well as inhabiting different areas, these ecotypes differ in their diving abilities (Klatsky 2004) and prey types (Mead and Potter 1995).

The bottlenose dolphin is expected to be one of the most abundant cetaceans in the Hawaiian survey area, based on previous surveys in the region (Barlow 2006; Baird *et al.* 2013; Bradford *et al.* 2017). Higher densities are expected to occur around the Hawaiian Islands than in far offshore waters of the Hawaiian EEZ (Forney *et al.* 2015). Photo-identification studies have shown that there are distinct resident populations at the four island groups in Hawaii (Kauai & Niihau, Oahu, the 4-island region, and the Island of Hawaii); the 1,000-m isobath serves as the boundary between these resident insular stocks and the Hawaii pelagic stock (Martien *et al.* 2012). Note that the Kauai/Niihau stock range does not occur near the proposed tracklines and will not be discussed further. Additionally, 98.5 percent of the Hawaii survey will take in deep (≤ 1,000 m) water. The areas where the insular stocks are found are also considered BIAs (Baird *et al.* 2015). Proposed seismic Lines 1 and 2 would traverse the BIAS to the west of Oahu and west of the Island of Hawaii.

During small-boat surveys around the Hawaiian Islands in 2000–2012, the bottlenose dolphin was sighted in water as deep as 4,500 m, but the highest sighting rates occurred in water <500 m deep (Baird *et al.* 2013). Sightings were made during all seasons off the Island of Hawaii, including near proposed seismic Line 1, and off Oahu (Baird *et al.* 2013). Common bottlenose dolphins were also observed during summer–fall surveys of the Hawaiian EEZ, mostly in nearshore waters but also in offshore waters, including in and near the proposed survey area among the Main Hawaiian Islands, and to the north and south of the islands (see map in Carretta *et al.* 2017). Fifteen sightings were made in 2002 (Barlow 2006), and 19 sightings were made in 2010 (Bradford *et al.* 2017).

In the western North Pacific Ocean, common bottlenose dolphins have been sighted off the east coast of Japan during summer surveys in 1983–1991 (Miyashita 1993a). Although only part of the proposed Emperor Seamounts survey area was surveyed during the month of August, no sightings were made within or near the survey area (Miyashita 1993a). Offshore sightings to the south of the proposed survey area were made during September (Miyashita 1993a), and there is also a record just to the southwest of the survey area during summer (Kanaji *et al.* 2017). The distributional range of the common bottlenose dolphin does not appear to extend north to the Emperor Seamounts survey area; thus, it is not expected to be encountered during the survey.

Short-Beaked Common Dolphin

The common dolphin is found in tropical and warm temperate oceans around the World (Perrin 2009a). It ranges as far south as 40° S in the Pacific Ocean, is common in coastal waters 200–300 m deep, and is also associated with prominent underwater topography, such as seamounts (Evans 1994). There are two species of common dolphins: The short-beaked common dolphin (*D. delphis*) and the long-beaked common dolphin (*D. capensis*). The short-beaked common dolphin is mainly found in offshore waters, and the long-beaked common dolphin is more prominent in coastal areas.

During Japanese sighting surveys in the western North Pacific in August–September, both long- and short-beaked common dolphins have been seen (Kato *et al.* 2005). Kanaji *et al.* (2017) reported one record to the southwest of the proposed survey area during summer. There are also bycatch records of short-beaked common dolphins near the Emperor Seamounts survey area during summer and winter (Hobbs and Jones 1993). Based on information regarding the distribution and habitat preferences, only the short-beaked common dolphin could occur in the region.

Both the the short-beaked and long-beaked common dolphin are not expected to occur in the Hawaiian survey area as no sightings have been made of either species during surveys of the Hawaii Islands (Barlow 2006; Baird *et al.* 2013; Bradford *et al.* 2017).

Pantropical Spotted Dolphin

The pantropical spotted dolphin is one of the most abundant cetaceans and is distributed worldwide in tropical and some subtropical waters (Perrin 2009b), between ~40° N and 40° S (Jefferson *et al.* 2015). It is found primarily in deeper waters, but can also be found in coastal, shelf, and slope waters (Perrin 2009b). There are two forms of pantropical spotted dolphin: Coastal and offshore. The offshore form inhabits tropical, equatorial, and southern subtropical water masses; the pelagic individuals around the Hawaiian Islands belong to a stock distinct from those in the ETP (Dizon *et al.* 1991; Perrin 2009b). Spotted dolphins are commonly seen together with spinner dolphins in mixed-species groups, *e.g.,* in the ETP (Au and Perryman 1985), off Hawaii (Psarakos *et al.* 2003), and in the Marquesas Archipelago (Gannier 2002).

The pantropical spotted dolphin is expected to be one of the most abundant cetaceans in the proposed Hawaiian survey area based on previous surveys in the region (Baird *et al.* 2013; Barlow 2006; Bradford *et al.* 2017). Higher densities are expected to occur around the Main Hawaiian Islands than elsewhere in the Hawaiian EEZ (Forney

et al. 2015). Sightings rates peak in depths from 1,500 to 3,500 m (Baird *et al.* 2013). The Main Hawaiian Islands insular spotted dolphin stock consists of two separate stocks at Oahu and 4-Islands (which extend 20 km seaward), and one stock off the Island of Hawaii, up to 65 km from shore (Carretta *et al.* 2017). Spotted dolphins outside of these insular stocks are part of the Hawaii pelagic stock (Carretta *et al.* 2017).

During small-boat surveys around the Hawaiian Islands in 2000–2012, the pantropical spotted dolphin was sighted in all water depth categories, with the lowest sighting rate in water <500 m (Baird *et al.* 2013). It was observed during all seasons, including off of Hawaii Island and Oahu (Baird *et al.* 2013). It was also seen during summer–fall surveys of the Hawaiian Islands EEZ including in the proposed survey area, with sightings to the north, south, and around the Main Hawaiian Islands (see map in Carretta *et al.* 2017); 14 sightings were made in 2002 (Barlow 2006), and 12 sightings were made in 2010 (Bradford *et al.* 2017). The areas off southwest Oahu, south of Lanai, and west of the Island of Hawaii are considered BIAs (Baird *et al.* 2015); proposed seismic Line 1 traverses the BIA west of the Island of Hawaii. One sighting was made in July 2010 in the northwestern portion of the Hawaiian EEZ during the Shatsky Rise cruise (Holst and Beland 2010).

In the western Pacific, pantropical spotted dolphins occur from Japan south to Australia; they have been hunted in drive fisheries off Japan for decades (Kasuya 2007). A sighting of three individuals was made in offshore waters east of Japan in August 2010 during the Shatksy Rise cruise (Holst and Beland 2010). Pantropical spotted dolphins were also sighted off the east coast of Japan during summer surveys in 1983–1991, with the highest densities in offshore waters between 30° N and 37° N (Miyashita 1993a). Although only part of the proposed Emperor Seamounts survey area was surveyed during the month of August, no sightings were made within or near the survey area; offshore sightings to the south of the proposed survey area were made during August and September (Miyashita 1993a). The distributional range of the pantropical spotted dolphin does not appear to extend north to the Emperor Seamounts survey area; thus, it is not expected to be encountered during the survey.

Spinner Dolphin

The spinner dolphin is pantropical in distribution, including oceanic tropical and sub-tropical waters between 40° N and 40° S (Jefferson *et al.* 2015). It is generally considered a pelagic species (Perrin 2009b), but can also be found in coastal waters and around oceanic islands (Rice 1998). In Hawaii, spinner dolphins belong to the offshore stock (*S.l. longirostris;* Gray's spinner) that is separate from animals in the ETP (Dizon *et al.* 1991).

The spinner dolphin is expected to be one of the most abundant cetaceans in the Hawaiian survey area, based on previous surveys in the region (Barlow 2006; Baird *et al.* 2013; Bradford *et al.* 2017). Higher densities are expected to occur around in offshore waters south of the Hawaiian Islands (Forney *et al.* 2015). There are six separate stocks managed within the Hawaiian EEZ—the Hawaii Island, Oahu/4-islands, Kauai/Niihau, Pearl & Hermes Reef, Midway Atoll/Kure, and Hawaiian pelagic stocks (Carretta *et al.* 2017); individuals from three of these stocks (Hawaii pelagic, Hawaii Island, Oahu/4-Islands) are expected to overlap with the proposed survey area. The boundaries of these stocks are out to 10 n.mi. from shore; these regions are also considered BIAs (Baird *et al.* 2015). Proposed seismic Line 1 traverses the BIA west of the Island of Hawaii.

During small-boat surveys around the Hawaiian Islands in 2000–2012, it was sighted in water as deep as 3,000 m, with the highest sighting rates in water <500 m deep (Baird *et al.* 2013). It was seen during all months, including off the west coast of the Island of Hawaii and off Oahu (Baird *et al.* 2013). Spinner dolphins were also sighted in the proposed survey area during summer–fall surveys of the Hawaiian Islands EEZ, including south of Ohau (see map in Carretta *et al.* 2017); eight sightings were made in 2002 (Barlow 2006) and four were made in 2010 (Bradford *et al.* 2013).

Kato *et al.* (2005) noted that spinner dolphins were seen during Japanese sighting surveys in the western North Pacific in August–September. To the best of our knowledge, there are no data on the occurrence of spinner dolphins near the Emperor Seamounts survey area. However, the survey area is located to the north of the known range of the spinner dolphins. Therefore, they are not anticipated to occur in the Emperor Seamounts area.

Striped Dolphin

The striped dolphin has a cosmopolitan distribution in tropical to warm temperate waters from ~50° N to 40° S (Perrin *et al.* 1994a; Jefferson *et al.* 2015). It is typically found in waters outside the continental shelf and is often associated with convergence zones and areas of upwelling (Archer 2009). It occurs primarily in pelagic waters, but has been observed approaching shore where there is deep water close to the coast (Jefferson *et al.* 2015).

The striped dolphin is expected to be one of the most abundant cetaceans in the proposed Hawaiian survey area, based on previous surveys in the region (Barlow 2006; Baird *et al.* 2013; Bradford *et al.* 2017). Higher densities are expected to occur around in offshore waters of the Hawaiian EEZ (Forney *et al.* 2015). During small-boat surveys around the Hawaiian Islands in 2000–2012, sightings were made in water depths of 1,000–5,000 m, with the highest sighting rates in water deeper than 3000 m (Baird *et al.* 2013). Sightings were made during all seasons, including near proposed seismic Line 1 off the Island of Hawaii (Baird *et al.* 2013). It was also sighted within the proposed survey area during summer–fall shipboard surveys of the Hawaii Islands EEZ, including north and south of the Main Hawaiian Islands (see map in Carretta *et al.* 2017); 15 sightings were made in 2002 (Barlow 2006) and 25 sightings were made in 2010 (Bradford *et al.* 2013).

In the western North Pacific, the striped dolphin was one of the most common dolphin species seen during Japanese summer sighting surveys (Miyashita 1993a). During these surveys, densities were highest in offshore areas between 35° N and 40° N, and in coastal waters of southeastern Japan (Miyashita 1993a). Although only part of the proposed Emperor Seamounts survey area was surveyed during the month of August, no sightings were made within the survey area; sightings near the proposed survey area, south of 41° N, were made during August (Miyashita 1993a). Kanaji *et al.* (2017) reported on another record during summer to the southwest of the survey area. One winter bycatch record was reported just to the south of the survey area for October 1990 to May 1991 (Hobbs and Jones 1993).

Based on its distributional range and habitat preferences, the striped dolphin could be encountered in both the Hawaii and Emperor Seamounts survey areas.

Fraser's Dolphin (Lagenodelphis hosei)

Fraser's dolphin is a tropical oceanic species distributed between 30° N and 30° S that generally inhabits deeper, offshore water (Dolar 2009). It occurs rarely in temperate regions and then only in relation to temporary oceanographic anomalies such as El Niño events (Perrin *et al.* 1994b). In the eastern tropical pacific, it was sighted at

least 15 km from shore in waters 1,500–2,500 m deep (Dolar 2009).

Fraser's dolphin is one of the most abundant cetaceans in the offshore waters of the Hawaiian Islands EEZ (Barlow 2006; Bradford *et al.* 2017). Summer–fall shipboard surveys of the EEZ resulted in two sightings of Fraser's dolphin in 2002 and four in 2010, all in the western portion of the EEZ (Barlow 2006; Bradford *et al.* 2013; Carretta *et al.* 2017). During small-boat surveys around the Hawaiian Islands in 2000–2012, only two sightings were made off the west coast of the Island of Hawaii, one during winter and one during spring in water deeper than 1000 m.

Fraser's dolphin was seen during Japanese sighting surveys in the western North Pacific during August–September (Kato *et al.* 2005). However, its range does not extend as far north as the Emperor Seamounts survey area. Thus, Fraser's dolphin is not expected to occur in the Emperor Seamounts survey area, but it could be encountered in deep water of the Hawaii survey area.

Pacific White-Sided Dolphin

The Pacific white-sided dolphin is found throughout the temperate North Pacific, in a relatively narrow distribution between 38° N and 47° N (Brownell *et al.* 1999). It is common both on the high seas and along the continental margins (Leatherwood *et al.* 1984; Dahlheim and Towell 1994; Ferrero and Walker 1996). Pacific white-sided dolphins often associate with other species, including cetaceans (especially Risso's and northern right whale dolphins; Green *et al.* 1993), pinnipeds, and seabirds.

Pacific white-sided dolphins were seen throughout the North Pacific during surveys conducted during 1983–1990 (Buckland *et al.* 1993; Miyashita 1993b). Sightings were made in the western Pacific during the summer (Buckland *et al.* 1993; Miyashita 1993b), as well as during spring and fall (Buckland *et al.* 1993). Pacific white-sided dolphins were observed in the southern portion of the Emperor Seamounts survey area, south of 45° S, as well as at higher latitudes just to the east (Buckland *et al.* 1993; Miyashita 1993b). Bycatch in the squid driftnet fishery has also been reported for the Emperor Seamounts survey area (Hobbs and Jones 1993; Yatsu *et al.* 1993). Thus, Pacific white-sided dolphins could be encountered in the Emperor Seamounts survey area, but they are not known to occur as far south as Hawaii.

Northern Right Whale Dolphin

The northern right whale dolphin is found in cool temperate and sub-arctic waters of the North Pacific, ranging from 34–55° N (Lipsky 2009). It occurs from the Kuril Islands south to Japan and eastward to the Gulf of Alaska and southern California (Rice 1998). The northern right whale dolphin is one of the most common marine mammal species in the North Pacific, occurring primarily on the outer continental shelf, slope waters, and oceanic regions, where water depths are >100 m (see Green *et al.* 1993; Barlow 2003; Carretta *et al.* 2017). The northern right whale dolphin does, however, come closer to shore where there is deep water, such as over submarine canyons (Jefferson *et al.* 2015).

Northern right whale dolphins were seen throughout the North Pacific during surveys conducted during 1983–1990, with sightings made in the western Pacific primarily during the summer (Buckland *et al.* 1993; Miyashita 1993b). Northern right whale dolphins were observed in the southern portion of the Emperor Seamounts survey area, south of 45° S (Buckland *et al.* 1993; Miyashita 1993b). Bycatch records for the Emperor Seamounts survey area have also been reported (Hobbs and Jones 1993; Yatsu *et al.* 1993). One sighting was made just to the east of the survey area, at a more northerly latitude (Miyashita 1993b). Thus, northern right whale dolphins could be encountered in the Emperor Seamounts survey area, but their distribution does not range as far south as the Hawaiian Islands.

Risso's Dolphin

Risso's dolphin is primarily a tropical and mid-temperate species distributed worldwide (Kruse *et al.* 1999). It occurs between 60° N and 60° S, where surface water temperatures are at least 10° C (Kruse *et al.* 1999). Water temperature appears to be an important factor affecting its distribution (Kruse *et al.* 1999). Although it occurs from coastal to deep water, it shows a strong preference for mid-temperate waters of the continental shelf and slope (Jefferson *et al.* 2014).

During small-boat surveys around the Hawaiian Islands in 2000–2012, sighting rates were highest in water >3,000 m deep (Baird *et al.* 2013). Sightings were made during all seasons off the west coast of the Island of Hawaii, including near proposed seismic Line 1; no sightings were made off Oahu (Baird *et al.* 2013). During summer–fall surveys of the Hawaiian Islands EEZ, seven sightings were made in 2002 (Barlow 2006) and 10 were made in 2010 (Bradford *et al.* 2017); several sightings occurred within the proposed survey area south of the Main Hawaiian Islands (see map in Carretta *et al.* 2017).

Risso's dolphins were regularly seen during Japanese summer sighting surveys in the western North Pacific (Miyashita 1993a), and one individual was seen in the offshore waters east of Japan on 18 August 2010 during the Shatksy Rise cruise (Holst and Beland 2010). Occurrence in the western North Pacific appears to be patchy, but high densities were observed in coastal waters, between 148° E–157° E, and east of 162° E (Miyashita 1993a). Although only part of the proposed Emperor Seamounts survey area was surveyed during the month of August, no sightings were made within the survey area; however, sightings were made south of 41° N (Miyashita 1993a). As its regular northern range extends to the southernmost portion of the Emperor Seamounts survey area, and one record has been reported outside of its range in the Aleutian Islands (Jefferson *et al.* 2014). Therefore, the Risso's dolphin is expected to occur in the Emperor Seamounts survey area.

Melon-Headed Whale

The melon-headed whale is an oceanic species found worldwide in tropical and subtropical waters from ~40° N to 35° S (Jefferson *et al.* 2015). It is commonly seen in mixed groups with other cetaceans (Jefferson and Barros 1997; Huggins *et al.* 2005). It occurs most often in deep offshore waters and occasionally in nearshore areas where deep oceanic waters occur near the coast (Perryman 2009). In the North Pacific, it is distributed south of central Japan and southern California, as well as across the Pacific, including Hawaii.

Photo-identification and telemetry studies have revealed that there are two distinct populations of melon-headed whales in Hawaiian waters—the Hawaiian Islands stock and the Kohala resident stock associated with the west coast of the Island of Hawaii (Aschettino *et al.* 2012; Oleson *et al.* 2013; Carretta *et al.* 2017). Individuals in the smaller Kohala resident stock have a limited range restricted to shallower waters of the Kohala shelf and west side of Hawaii Island. During small-boat surveys around the Hawaiian Islands in 2000–2012, sightings were made during all seasons in all water depths up to 5,000 m, including sightings off the west coasts of the Island of Hawaii and Oahu (Baird *et al.* 2013). There are numerous records near the proposed seismic transect off the west coast of the Hawaiian Island (Carretta *et al.* 2017); this area is considered a BIA (Baird *et al.* 2015). During summer–fall surveys

of the Hawaiian Islands EEZ in 2002 and 2010, there was a single sighting each year; neither was located near the proposed survey area (Barlow *et al.* 2004; Bradford *et al.* 2017). Satellite telemetry data revealed distant pelagic movements, associated with feeding, nearly to the edge of the Hawaiian Islands EEZ (Oleson *et al.* 2013).

Melon-headed whales have been seen during Japanese sighting surveys in the western North Pacific in August–September (Kato *et al.* 2005). However, their distributional range does not extend to the Emperor Seamounts survey area. Thus, melon-headed whale is expected to occur in the proposed Hawaiian survey area, but not in the Emperor Seamounts survey area.

Pygmy Killer Whale

The pygmy killer whale has a worldwide distribution in tropical and subtropical waters (Donahue and Perryman 2009), generally not ranging south of 35° S (Jefferson *et al.* 2015). In warmer water, it is usually seen close to the coast (Wade and Gerrodette 1993), but it is also found in deep waters. In the North Pacific, it occurs from Japan and Baja, California, southward and across the Pacific Ocean, including Hawaii.

A small resident population inhabits the waters around the Main Hawaiian Islands (Oleson *et al.* 2013), where it generally occurs within ~20 km from shore (Baird *et al.* 2011). During small-boat surveys around the Hawaiian Islands in 2000–2012, sightings were made during all seasons in water up to 3000 m deep, off the west coasts of Oahu and the Island of Hawaii (Baird *et al.* 2013), including near proposed seismic Lines 1 and 2. The waters off the west and southeast coasts of the Island of Hawaii are considered a BIA (Baird *et al.* 2015). Pygmy killer whales were also recorded during summer–fall surveys of the Hawaiian Islands EEZ: Three sightings in 2002 (Barlow *et al.* 2004; Barlow 2006) and five in 2010 (Bradford *et al.* 2017), including some within the study area to the north and south of the Main Hawaiian Islands (Carretta *et al.* 2017).

Kato *et al.* (2005) reported the occurrence of this species during Japanese sighting surveys in the western North Pacific in August–September. However, its distributional range indicates that the pygmy killer whale is unlikely to occur in the Emperor Seamounts survey area.

False Killer Whale

The false killer whale is found worldwide in tropical and temperate waters, generally between 50° N and 50° S (Odell and McClune 1999). It is widely distributed, but generally uncommon throughout its range (Baird 2009). It is gregarious and forms strong social bonds, as is evident from its propensity to strand en masse (Baird 2009). The false killer whale generally inhabits deep, offshore waters, but sometimes is found over the continental shelf and occasionally moves into very shallow water (Jefferson *et al.* 2008; Baird 2009). In the North Pacific, it occurs from Japan and southern California, southward and across the Pacific, including Hawaii.

Telemetry, photo-identification, and genetic studies have identified three independent populations of false killer whales in Hawaiian waters: Main Hawaiian Islands Insular, Northwestern Hawaiian Islands, and Hawaii pelagic stocks (Chivers *et al.* 2010; Baird *et al.* 2010, 2013; Bradford *et al.* 2014; Carretta *et al.* 2017). The range of the Northwestern Hawaiian Islands stock is not the vicinity of the Hawaii survey tracklines and, therefore, will not be discussed further. The population inhabiting the Main Hawaiian Islands is thought to have declined dramatically since 1989; the reasons for this decline are still uncertain, although interactions with longline fisheries have been suggested (Reeves *et al.* 2009; Bradford and Forney 2014). Higher densities likely occur in the western-most areas of the Hawaiian EEZ (Forney *et al.* 2015).

During 2008–2012, 26 false killer whales were observed hooked or entangled by longline gear within the Hawaiian Islands EEZ or adjacent high-seas waters, and 22 of those were assessed as seriously injured; locations of false killer whale and unidentified blackfish takes observed included the proposed survey area (Bradford and Forney 2014). NMFS published a final rule to implement the False Killer Whale Take Reduction Plan on November 29, 2012, 77 FR 71260). The final rule includes gear requirements (''weak'' circle hooks and strong branch lines) in the deep-set longline fishery, longline closure areas, training and certification for vessel owners and captains in marine mammal handling and release, captains' supervision of marine mammal handling and release, and posting of placards on longline vessels.

Critical habitat has been proposed for the endangered insular population of the false killer whale in Hawaii (82 FR 51186; November 3, 2017). In general, this includes waters between the 45- and 3,200-m isobaths in the Main Hawaiian Islands (NNMFS 2017c). Note that in the critical habitat proposal, NMFS invited the public to submit comments on whether it is appropriate to include anthropogenic noise as a feature essential to the conservation false killer whales in the final rule. The final rule is expected to be published ~1 July 2018 (NMFS 2017c).

High-use areas in Hawaii include the north half of the Island of Hawaii, the northern areas of Maui and Molokai, and southwest of Lanai (Baird *et al.* 2012). These areas are considered BIAs (Baird *et al.* 2015), and proposed seismic Line 1 to the west of the Island of Hawaii traverses the BIA. Individuals are found up to 122 km from shore (Baird *et al.* 2012). Satellite-tagged false killer whales were also recorded using the areas off the western Island of Hawaii and west of Oahu during summer 2008 and fall 2009 (Baird *et al.* 2012). During small-boat surveys around the Hawaiian Islands in 2000–2012, the highest sighting rates occurred in water >3,500 m deep (Baird *et al.* 2013). Sightings were made during all seasons, including off the west coast of the Island of Hawaii and Oahu (Baird *et al.* 2013). During summer–fall surveys of the Hawaiian Islands EEZ, two sightings were made in 2002 (Barlow *et al.* 2004; Barlow 2006) and 14 were made in 2010 (Bradford *et al.* 2017), including two within the study area, south of the Main Hawaiian Islands (see map in Carretta *et al.* 2017). False killer whales were also detected acoustically off the west coast of the Hawaiian Island and off Kauai (Baumann-Pickering *et al.* 2015).

False killer whales have been seen during Japanese summer sighting surveys in the western Pacific Ocean (Miyashita 1993a), and a sighting of four individuals was made in offshore waters east of Japan in August 2010 during the Shatksy Rise cruise (Holst and Beland 2010). The distribution in the western Pacific was patchy, with several high-density areas in offshore waters (Miyashita 1993a). Although only part of the proposed Emperor Seamounts survey area was surveyed during the month of August, no sightings were made within the survey area; however, one sighting was made just to the southeast of the survey area (Miyashita 1993a). Jefferson *et al.* (2015) did not show its distributional range to include the Emperor Seamounts region.

False killer whale is expected to occur in the proposed Hawaiian and Emperor Seamounts survey areas.

Killer Whale

The killer whale is cosmopolitan and globally fairly abundant; it has been observed in all oceans of the World (Ford 2009). It is very common in temperate waters and also frequents tropical waters, at least seasonally

(Heyning and Dahlheim 1988). High densities of the species occur in high latitudes, especially in areas where prey is abundant. Killer whale movements generally appear to follow the distribution of their prey, which includes marine mammals, fish, and squid.

Killer whales are rare in the Hawaii Islands EEZ. Baird *et al.* (2006) reported 21 sighting records in Hawaiian waters between 1994 and 2004. During small-boat surveys around Hawaii Island in 2000–2012, a single sighting was made during spring in water <2000 m deep off the west coast of Hawaii Island (Baird *et al.* 2013). During summer—fall surveys of the Hawaiian Islands EEZ, two sightings were made in 2002 (Barlow *et al.* 2004; Barlow 2006) and one was made in 2010 (Bradford *et al.* 2017); none was made within the proposed survey area (Barlow *et al.* 2004; Bradford *et al.* 2017; Carretta *et al.* 2017). Numerous additional sightings in and north of the EEZ have been made by observers on longliners, some at the edge of the EEZ north of the Main Hawaiian Islands (Carretta *et al.* 2017).

Very little is known about killer whale abundance and distribution in the western Pacific Ocean outside of Kamchatka. However, they are common along the coast of Russia, Sea of Okhotsk, and Sea of Japan, Sakhalin Island, and Kuril Islands (Forney and Wade 2006). Kato *et al.* (2005) reported sightings of this species during Japanese sighting surveys in the western North Pacific in August–September. However, there is very little information on killer whales for the Emperor Seamounts survey area, but based on information regarding the distribution and habitat preferences, they are likely to occur there (see Forney and Wade 2006).

Killer whales are expected to occur in both the proposed Hawaiian and Emperor survey areas.

Short-Finned Pilot Whale

The short-finned pilot whale is found in tropical and warm temperate waters; it is seen as far south as ~40° S and as far north as 50° N (Jefferson *et al.* 2015). It is generally nomadic, but may be resident in certain locations, including Hawaii. Pilot whales occur on the shelf break, over the slope, and in areas with prominent topographic features (Olson 2009). Based on genetic data, Van Cise *et al.* (2017) suggested that two types of short-finned pilot whales occur in the Pacific—one in the western and central Pacific, and one in the Eastern Pacific; they hypothesized that prey distribution rather than sea surface temperature determine their latitudinal ranges.

During surveys of the Main Hawaiian Islands during 2000–2012, short-finned pilot whales were the most frequently sighted cetacean (Baird *et al.* 2013). Higher densities are expected to occur around the Hawaiian Islands rather than in far offshore waters of the Hawaiian EEZ (Forney *et al.* 2015). Photo-identification and telemetry studies indicate that there may be insular and pelagic populations of short-finned pilot whales in Hawaii (Mahaffy 2012; Oleson *et al.* 2013). Genetic research is also underway to assist in delimiting population stocks for management (Carretta *et al.* 2017). During small-boat surveys around the Hawaiian Islands in 2000–2012, pilot whales were sighted in water as deep as 5,000 m, with the highest sighting rates in water depths of 500–2,500 m (Baird *et al.* 2013). Sightings were made during all seasons, mainly off the west coasts of the Island of Hawaii and Ohau (Baird *et al.* 2013). The waters off the west coast of the Island of Hawaii are considered a BIA (Baird *et al.* 2015); proposed seismic tLine 1 traverses the BIA. During summer—fall surveys of the Hawaiian Islands EEZ, 25 sightings were made in 2002 (Barlow 2006) and 36 were made in 2010 (Bradford *et al.* 2017), including within the proposed survey area, north, south, and between the Main Hawaiian Islands (see Carretta *et al.* 2017). Short-finned pilot whales were also detected acoustically off the west coast of the Island of Hawaii and off Kauai (Baumann-Pickering *et al.* 2015).

Stock structure of short-finned pilot whales has not been adequately studied in the North Pacific, except in Japanese waters, where two stocks have been identified based on pigmentation patterns and head shape differences of adult males (Kasuya *et al.* 1988). The southern stock of short-finned pilot whales has been observed during Japanese summer sightings surveys (Miyashita 1993a) and is morphologically similar to pilot whales found in Hawaiian waters (Carretta *et al.* 2017). Distribution of short-finned pilot whales in the western North Pacific appears to be patchy, but high densities were observed in coastal waters of central and southern Japan and in some areas offshore (Miyashita 1993a). A sighting of three individuals was made in offshore waters east of Japan in August 2010 during the Shatksy Rise cruise (Holst and Beland 2010). Although only part of the proposed Emperor Seamounts survey area was surveyed during the month of August, no sightings were made within or near the survey area; offshore sightings to the south of the proposed survey area were made during the month of September (Miyashita 1993a). Although Jefferson *et al.* (2015) did not include the Emperor Seamounts region in its distributional range, Olson (2009) did.

Short-finned pilot whales are expected to occur in both the proposed Hawaiian and Emperor Seamounts survey areas.

Dall's Porpoise

Dall's porpoise is only found in the North Pacific and adjacent seas. It is widely distributed across the North Pacific over the continental shelf and slope waters, and over deep (>2500 m) oceanic waters (Hall 1979), ranging from ~30–62° N (Jefferson *et al.* 2015). In general, this species is common throughout its range (Buckland *et al.* 1993). It is known to approach vessels to bowride (Jefferson 2009b).

In the western North Pacific, there are two different color morphs which are also considered sub-species: The *truei*-type (*P. d. truei*) and the *dalli*-type (*P. d. dalli*) (Jefferson *et al.* 2015). They can be distinguished from each other by the extent of their white thoracic patches—the *truei*-type has a much broader patch, which extends nearly the length of the body. Both types could be encountered in the proposed Emperor Seamounts survey area.

Dall's porpoise was one of the most common cetaceans in the bycatch of the central and western North Pacific high-seas driftnet fisheries, but that source of mortality is not thought to have substantially depleted their abundance in the region (Hobbs and Jones 1993). Dall's porpoises were seen throughout the North Pacific during surveys conducted during 1987–1990 (Buckland *et al.* 1993), including in the western Pacific during the summer (Buckland *et al.* 1993; Kato *et al.* 2005). The observed range included the entire Emperor Seamounts survey area (Buckland *et al.* 1993). Records of both types within the Emperor Seamounts survey area, in particular for April–July, have also been reported by Kasuya (1982), and bycatch records in the proposed survey area have also been reported (Hobbs and Jones 1993; Yatsu *et al.* 1993). Thus, Dall's porpoise could be encountered in the Emperor Seamounts survey area, but its distribution does not range as far south as the Hawaiian Islands.

Hawaiian Monk Seal

The Hawaiian monk seal only occurs in the Central North Pacific. It is distributed throughout the Hawaiian Island chain, with most of the population occurring in the Northwestern Hawaiian Islands (within the PMNM), and a small but increasing

number residing in the Main Hawaiian Islands (Baker *et al.* 2011). Six main breeding subpopulations are located at the Kure Atoll, Midway Islands, Pearl and Hermes Reef, Lisianski Island, Laysan Island, and French Frigate Shoals (Baker *et al.* 2011). Most births occur from February to August, with a peak in April to June, but births have been reported any time of the year (Gilmartin and Forcada 2009). Hawaiian monk seals show high site fidelity to natal islands (Gilmartin and Forcada 2009; Wilson *et al.* 2017). They mainly occur within 50 km of atolls/islands (Parrish *et al.* 2000; Stewart *et al.* 2006; Wilson *et al.* 2017) and within the 500-m isobath (*e.g.,* Parrish *et al.* 2002; Wilson *et al.* 2017). Secondary occurrence may occur in water as deep as 1000 m, but occurrence beyond the 1000-m isobath is rare (DoN 2005). Nonetheless, tagged monk seals have been tracked in water >1000 m deep (Wilson *et al.* 2017).

Hawaiian monk seals are benthic foragers that feed on marine terraces of atolls and banks; most foraging occurs in water depths <100 m deep but occasionally to depths up to 500 m (Parrish *et al.* 2002; Stewart *et al.* 2006). Stewart *et al.* (2006) used satellite tracking to examine the foraging behavior of monk seals at the six main breeding colonies in the Northwestern Hawaiian Islands. Foraging trips varied by sex and by age and ranged from <1 km up to 322 km from haul-out sites. Wilson *et al.* (2017) reported foraging trips of up to 100 km. Satellite tracking of Hawaiian monk seals revealed that home ranges in Main Hawaiian Islands were much smaller than those in the Northwestern Hawaiian Islands (NMFS 2007, 2014); home ranges for most seals were <2000 km^2 (Wilson *et al.* 2017).

Critical habitat has been designated based on preferred pupping and nursing areas, significant haul-out areas, and marine foraging areas out to a depth of 200 m (NMFS 2017b). In the Main Hawaiian Islands, critical habitat generally includes marine habitat from the seafloor to 10 m above the seafloor, from the 200-m isobath to the shoreline and 5 m inland, with some exceptions for specific areas (NMFS 2017b). For the Island of Hawaii of Hawaii, Maui, and Oahu (islands adjacent to the proposed transects), all marine habitat and inland habitat is included as critical habitat (NMFS 2017b). The seismic transects are located at least 10 km from monk seal critical habitat (Fig. 1).

Hawaiian monk seals have been reported throughout the Main Hawaiian Islands, including the west coast of Oahu, the east coast of Maui, and the north coast of the Island of Hawaii (Baker and Johanos 2004; DoN 2005). Tagged seals showed movements among the Main Hawaiian Islands, and were reported to occur near and crossing proposed seismic Lines 1 and 2 off the west coast of Oahu and the Island of Hawaii (Wilson *et al.* 2017). However, the core area of occurrence around Oahu was reported to be off the south coast, not the west coast (Wilson *et al.* 2017). Thus, monk seals could be encountered during the proposed survey, especially in nearshore portions (<1000 m deep), as well as areas near the islands where water depth is greater than >1000 m.

Northern Fur Seal

The northern fur seal is endemic to the North Pacific Ocean and occurs from southern California to the Bering Sea, Okhotsk Sea, and Honshu Island, Japan (Muto *et al.* 2017). During the breeding season, most of the worldwide population of northern fur seals inhabits the Pribilof Islands in the southern Bering Sea (Lee *et al.* 2014; Muto *et al.* 2017). The rest of the population occurs at rookeries on Bogoslof Island in the Bering Sea, in Russia (Commander Islands, Robben Island, Kuril Islands), on San Miguel Island in southern California (NMFS 1993; Lee *et al.* 2014), and on the Farallon Islands off central California (Muto *et al.* 2017). In the United States, two stocks are recognized—the Eastern Pacific and the California stocks (Muto *et al.* 2017). The Eastern Pacific stock ranges from the Pribilof Islands and Bogoslof Island in the Bering Sea during summer to California during winter (Muto *et al.* 2017).

When not on rookery islands, northern fur seals are primarily pelagic but occasionally haul out on rocky shorelines (Muto *et al.* 2017). During the breeding season, adult males usually come ashore in May–August and may sometimes be present until November; adult females are found ashore from June–November (Carretta *et al.* 2017; Muto *et al.* 2017). After reproduction, northern fur seals spend the next 7–8 months feeding at sea (Roppel 1984). Once weaned, juveniles spend 2–3 years at sea before returning to rookeries. Animals may migrate to the Gulf of Alaska, off Japan, and the west coast of the United States (Muto *et al.* 2017); in particular, adult males from the Pripilof Islands have been shown to migrate to the Kuril Islands in the western Pacific (Loughlin *et al.* 1999). The southern extent of the migration is ~35 N.

Northern fur seals were seen throughout the North Pacific during surveys conducted during 1987–1990, including in the western Pacific during the summer (Buckland *et al.* 1993). The observed range included the entire Emperor Seamounts survey area (Buckland *et al.* 1993). They have also been reported as bycatch in squid and large-mesh fisheries during summer in the Emperor Seamounts survey area (Hobbs and Jones 1993; Yatsu *et al.* 1993). Tracked adult male fur seals that were tagged on St. Paul Island in the Bering Sea in October 2009, wintered in the Bering Sea or northern North Pacific Ocean, and approached near the eastern-most extent of the Emperor Seamounts survey area; females migrated to the Gulf of Alaska and the California Current (Sterling *et al.* 2014). Tagged pups also approached the eastern portion of the Emperor Seamounts survey area during November (Lea *et al.* 2009). Thus, northern fur seals could be encountered in the Emperor Seamounts survey area; only juveniles would be expected to occur there during the summer. Their distribution does not range as far south as the Hawaiian Islands.

Northern Elephant Seal

Northern elephant seals breed in California and Baja California, primarily on offshore islands (Stewart *et al.* 1994), from December–March (Stewart and Huber 1993). Adult elephant seals engage in two long northward migrations per year, one following the breeding season, and another following the annual molt, with females returning earlier to molt (March–April) than males (July–August) (Stewart and DeLong 1995). Juvenile elephant seals typically leave the rookeries in April or May and head north, traveling an average of 900–1,000 km. Hindell (2009) noted that traveling likely takes place in water depths >200 m.

When not breeding, elephant seals feed at sea far from the rookeries, ranging as far north as 60° N, into the Gulf of Alaska and along the Aleutian Islands (Le Boeuf *et al.* 2000). Some seals that were tracked via satellite-tags for no more than 224 days traveled distances in excess of 10,000 km during that time (Le Beouf *et al.* 2000). Northern elephant seals that were satellite-tagged at a California rookery have been recorded traveling as far west as ~166.5–172.5° E, including the proposed Emperor Seamount survey area (Le Boeuf *et al.* 2000; Robinson *et al.* 2012; Robinson 2016 *in* OBIS 2018; Costa 2017 *in* OBIS 2018). Occurrence in the survey area was documented during August and September; during July and October, northern elephant seals were tracked just to the east of the survey area (Robinson *et al.* 2012). Post-molting seals traveled longer and farther

than post-breeding seals (Robinson *et al.* 2012).

Thus, northern elephant seals could be encountered in the Emperor Seamounts survey area during summer and fall. Although there are rare records of northern elephant seals in Hawaiian waters, they are unlikely to occur in the proposed survey area.

Ribbon Seal

Ribbon seals occur in the North Pacific and adjacent Arctic Ocean, ranging from the Okhotsk Sea, to the Aleutian Islands and the Bering, Chukchi, and western Beaufort seas. Ribbon seals inhabit the Bering Sea ice front from late-March to early-May and are abundant in the northern parts of the ice front in the central and western parts of the Bering Sea (Burns 1970; Burns 1981). In May to mid-July, when the ice recedes, some of the seals move farther north (Burns 1970; Burns 1981) to the Chukchi Sea (Kelly 1988c). However, most likely become pelagic and remain in the Bering Sea during the open-water season, and some occur on the Pacific Ocean side of the Aleutian Islands (Boveng *et al.* 2008). Of 10 seals that were tagged along the cost of the Kamchatka Peninsula in 2005, most stayed in the central and eastern Bering Sea, but two were tracked along the south side of the Aleutian Islands; 8 of 26 seals that were tagged in the central Bering Sea in 2007 traveled to the Bering Strait, Chukchi Sea, and Arctic Basin (Boveng *et al.* 2008). Although unlikely ribbon seals could be encountered in the proposed Emperor Seamounts survey area.

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 Hz and 35 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. Forty marine mammal species (36 cetacean and 4 pinniped (1 otariid and 3 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, 8 are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 25 are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and 3 are classified as high-frequency cetaceans (*i.e.,* Dall's porpoise and Kogia spp.).

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.

Description of Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source

(referenced to 1 μPa) while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy contained within a puls and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk-pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- Biological: Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- Anthropogenic: Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from a given activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Airgun arrays produce pulsed signals with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.,* omnidirectional), but airgun arrays do possess some

directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

As described above, a Kongsberg EM 122 MBES, a Knudsen Chirp 3260 SBP, and a Teledyne RDI 75 kHz Ocean Surveyor ADCP would be operated continuously during the proposed surveys, but not during transit to and from the survey areas. Due to the lower source level of the Kongsberg EM 122 MBES relative to the *Langseth's* airgun array (242 dB re 1 μPa · m for the MBES versus a minimum of 258 dB re 1 μPa · m (rms) for the 36 airgun array (NSF–USGS, 2011), sounds from the MBES are expected to be effectively subsumed by the sounds from the airgun array. Thus, any marine mammal potentially exposed to sounds from the MBES would already have been exposed to sounds from the airgun array, which are expected to propagate further in the water. Each ping emitted by the MBES consists of eight (in water >1,000 m deep) or four (<1,000 m) successive fan-shaped transmissions, each ensonifying a sector that extends 1° fore–aft. Given the movement and speed of the vessel, the intermittent and narrow downward-directed nature of the sounds emitted by the MBES would result in no more than one or two brief ping exposures of any individual marine mammal, if any exposure were to occur.

Due to the lower source levels of both the Knudsen Chirp 3260 SBP and the Teledyne RDI 75 kHz Ocean Surveyor ADCP relative to the *Langseth's* airgun array (maximum SL of 222 dB re 1 μPa · m for the SBP and maximum SL of 224 dB re 1 μPa · m for the ADCP, versus a minimum of 258 dB re 1 μPa · m for the 36 airgun array (NSF–USGS, 2011), sounds from the SBP and ADCP are expected to be effectively subsumed by sounds from the airgun array. Thus, any marine mammal potentially exposed to sounds from the SBP and/or the ADCP would already have been exposed to sounds from the airgun array, which are expected to propagate further in the water. As such, we conclude that the likelihood of marine mammal take resulting from exposure to sound from the MBES, SBP or ADCP is discountable and therefore we do not consider noise from the MBES, SBP or ADCP further in this analysis.

Acoustic Effects

Here, we discuss the effects of active acoustic sources on marine mammals.

Potential Effects of Underwater Sound—Please refer to the information given previously (''Description of Active Acoustic Sources'') regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to the use of airgun arrays.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40–dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6–dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data

from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as airgun pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

For mid-frequency cetaceans in particular, potential protective mechanisms may help limit onset of TTS or prevent onset of PTS. Such mechanisms include dampening of hearing, auditory adaptation, or behavioral amelioration (*e.g.,* Nachtigall and Supin, 2013; Miller *et al.,* 2012; Finneran *et al.,* 2015; Popov *et al.,* 2016).

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

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. 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.

Finneran *et al.* (2015) measured hearing thresholds in three captive bottlenose dolphins before and after exposure to ten pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors note that the failure to induce more significant auditory effects likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). In general, harbor porpoises have a lower TTS onset than other measured cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes.

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More information is needed on the relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a, b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that seismic surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007; Gailey *et al.,* 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Cerchio *et al.* (2014) used passive acoustic monitoring to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each ten minute sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale breeding activity was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during a seismic airgun survey. During the first 72 h of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the study area. This displacement persisted for a time period well beyond the 10-day duration of seismic airgun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 μPa^2-s caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the acoustic source vessel (estimated received level 143 dB pk-pk). Blackwell *et al.* (2013) found that bowhead whale call rates dropped

significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute SEL_{cum} of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). These studies demonstrate that even low levels of noise received far from the source can induce changes in vocalization and/or behavior for mysticetes.

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Humpback whales showed avoidance behavior in the presence of an active seismic array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in^3 or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during a seismic survey monitored whale movements and respirations pre-, during and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with seismic survey or vessel sounds.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its

energetic reserves sufficiently to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data on this. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in exceptional situations, reverberation occurs for much or all of the interval between pulses (*e.g.,* Simard *et al.* 2005; Clark and Gagnon 2006), which could mask calls. Situations with prolonged strong reverberation are infrequent. However, it is common for reverberation to cause some lesser degree of elevation of the background level between airgun pulses (*e.g.,* Gedamke 2011; Guerra *et al.* 2011, 2016; Klinck *et al.* 2012; Guan *et al.* 2015), and this weaker reverberation presumably reduces the detection range of calls and other natural sounds to some degree. Guerra *et al.* (2016) reported that ambient noise levels between seismic pulses were elevated as a result of reverberation at ranges of 50 km from the seismic source. Based on measurements in deep water of the Southern Ocean, Gedamke (2011) estimated that the slight elevation of background levels during intervals between pulses reduced blue and fin whale communication space by as much as 36–51 percent when a seismic survey was operating 450–2,800 km away. Based on preliminary modeling, Wittekind *et al.* (2016) reported that airgun sounds could reduce the communication range of blue and fin whales 2000 km from the seismic source. Nieukirk *et al.* (2012) and Blackwell *et al.* (2013) noted the potential for masking effects from seismic surveys on large whales.

Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls usually can be heard between the pulses (*e.g.,* Nieukirk *et al.* 2012; Thode *et al.* 2012; Bröker *et al.* 2013; Sciacca *et al.* 2016). As noted above, Cerchio *et al.* (2014) suggested that the breeding display of humpback whales off Angola could be disrupted by seismic sounds, as singing activity declined with increasing received levels. In addition, some cetaceans are known to change their calling rates, shift their peak frequencies, or otherwise modify their vocal behavior in response to airgun sounds (*e.g.,* Di Iorio and Clark 2010; Castellote *et al.* 2012; Blackwell *et al.* 2013, 2015). The hearing systems of baleen whales are undoubtedly more sensitive to low-frequency sounds than are the ears of the small odontocetes that have been studied directly (*e.g.,* MacGillivray *et al.* 2014). The sounds important to small odontocetes are

predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses.

Ship Noise

Vessel noise from the *Langseth* could affect marine animals in the proposed survey areas. Houghton *et al.* (2015) proposed that vessel speed is the most important predictor of received noise levels, and Putland *et al.* (2017) also reported reduced sound levels with decreased vessel speed. Sounds produced by large vessels generally dominate ambient noise at frequencies from 20 to 300 Hz (Richardson *et al.* 1995). However, some energy is also produced at higher frequencies (Hermannsen *et al.* 2014); low levels of high-frequency sound from vessels has been shown to elicit responses in harbor porpoise (Dyndo *et al.* 2015). Increased levels of ship noise have been shown to affect foraging by porpoise (Teilmann *et al.* 2015; Wisniewska *et al.* 2018); Wisniewska *et al.* (2018) suggest that a decrease in foraging success could have long-term fitness consequences.

Ship noise, through masking, can reduce the effective communication distance of a marine mammal if the frequency of the sound source is close to that used by the animal, and if the sound is present for a significant fraction of time (*e.g.,* Richardson *et al.* 1995; Clark *et al.* 2009; Jensen *et al.* 2009; Gervaise *et al.* 2012; Hatch *et al.* 2012; Rice *et al.* 2014; Dunlop 2015; Erbe *et al.* 2015; Jones *et al.* 2017; Putland *et al.* 2017). In addition to the frequency and duration of the masking sound, the strength, temporal pattern, and location of the introduced sound also play a role in the extent of the masking (Branstetter *et al.* 2013, 2016; Finneran and Branstetter 2013; Sills *et al.* 2017). Branstetter *et al.* (2013) reported that time-domain metrics are also important in describing and predicting masking. In order to compensate for increased ambient noise, some cetaceans are known to increase the source levels of their calls in the presence of elevated noise levels from shipping, shift their peak frequencies, or otherwise change their vocal behavior (*e.g.,* Parks *et al.* 2011, 2012, 2016a,b; Castellote *et al.* 2012; Melcón *et al.* 2012; Azzara *et al.* 2013; Tyack and Janik 2013; Luís *et al.* 2014; Sairanen 2014; Papale *et al.* 2015; Bittencourt *et al.* 2016; Dahlheim and Castellote 2016; Gospić and Picciulin 2016; Gridley *et al.* 2016; Heiler *et al.* 2016; Martins *et al.* 2016; O'Brien *et al.* 2016; Tenessen and Parks 2016). Harp seals did not increase their call frequencies in environments with increased low-frequency sounds (Terhune and Bosker 2016). Holt *et al.* (2015) reported that changes in vocal modifications can have increased energetic costs for individual marine mammals. A negative correlation between the presence of some cetacean species and the number of vessels in an area has been demonstrated by several studies (*e.g.,* Campana *et al.* 2015; Culloch *et al.* 2016).

Baleen whales are thought to be more sensitive to sound at these low frequencies than are toothed whales (*e.g.,* MacGillivray *et al.* 2014), possibly causing localized avoidance of the proposed survey area during seismic operations. Reactions of gray and humpback whales to vessels have been studied, and there is limited information available about the reactions of right whales and rorquals (fin, blue, and minke whales). Reactions of humpback whales to boats are variable, ranging from approach to avoidance (Payne 1978; Salden 1993). Baker *et al.* (1982, 1983) and Baker and Herman (1989) found humpbacks often move away when vessels are within several kilometers. Humpbacks seem less likely to react overtly when actively feeding than when resting or engaged in other activities (Krieger and Wing 1984, 1986). Increased levels of ship noise have been shown to affect foraging by humpback whales (Blair *et al.* 2016). Fin whale sightings in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015). Minke whales and gray seals have shown slight displacement in response to construction-related vessel traffic (Anderwald *et al.* 2013).

Many odontocetes show considerable tolerance of vessel traffic, although they sometimes react at long distances if confined by ice or shallow water, if previously harassed by vessels, or have had little or no recent exposure to ships (Richardson *et al.* 1995). Dolphins of many species tolerate and sometimes approach vessels (*e.g.,* Anderwald *et al.* 2013). Some dolphin species approach moving vessels to ride the bow or stern waves (Williams *et al.* 1992). Pirotta *et al.* (2015) noted that the physical presence of vessels, not just ship noise, disturbed the foraging activity of bottlenose dolphins. Sightings of striped dolphin, Risso's dolphin, sperm whale, and Cuvier's beaked whale in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015).

There are few data on the behavioral reactions of beaked whales to vessel noise, though they seem to avoid approaching vessels (*e.g.,* Würsig *et al.* 1998) or dive for an extended period when approached by a vessel (*e.g.,* Kasuya 1986). Based on a single observation, Aguilar Soto *et al.* (2006) suggest foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels.

In summary, project vessel sounds would not be at levels expected to cause anything more than possible localized and temporary behavioral changes in marine mammals, and would not be expected to result in significant negative effects on individuals or at the population level. In addition, in all oceans of the world, large vessel traffic is currently so prevalent that it is commonly considered a usual source of ambient sound (NSF–USGS 2011).

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death

through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

The *Langseth* travels at a speed of 4.1 kt (7.6 km/h) while towing seismic survey gear (LGL 2018). At this speed, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). No such incidents were reported for geophysical survey vessels during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = $0 - 5.5 \times 10^{-6}$; NMFS, 2013b). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of the vessel striking a marine mammal is low, we require a robust ship strike avoidance protocol (see ''Proposed Mitigation''), which we believe eliminates any foreseeable risk of ship strike. We anticipate that vessel collisions involving a seismic data acquisition vessel towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the required mitigation measures, the relatively slow speed of the vessel towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), and the presence of marine mammal observers, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

Stranding—When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.''

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Use of military tactical sonar has been implicated in a majority of investigated stranding events. Most known stranding events have involved beaked whales, though a small number have involved deep-diving delphinids or sperm whales (*e.g.,* Mazzariol *et al.,* 2010; Southall *et al.,* 2013). In general, long duration (~1 second) and high-intensity sounds (≤235 dB SPL) have been implicated in stranding events (Hildebrand, 2004). With regard to beaked whales, mid-frequency sound is typically implicated (when causation can be determined) (Hildebrand, 2004). Although seismic airguns create predominantly low-frequency energy, the signal does include a mid-frequency component. We have considered the potential for the proposed surveys to result in marine mammal stranding and have concluded that, based on the best available information, stranding is not expected to occur.

Effects to Prey—Marine mammal prey varies by species, season, and location and, for some, is not well documented. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pulsed sound on fish, although several are based on studies in support of construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from survey activities at the project area would be temporary avoidance of the

area. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Information on seismic airgun impacts to zooplankton, which represent an important prey type for mysticetes, is limited. However, McCauley *et al.* (2017) reported that experimental exposure to a pulse from a 150 inch^3 airgun decreased zooplankton abundance when compared with controls, as measured by sonar and net tows, and caused a two- to threefold increase in dead adult and larval zooplankton. Although no adult krill were present, the study found that all larval krill were killed after air gun passage. Impacts were observed out to the maximum 1.2 km range sampled.

In general, impacts to marine mammal prey are expected to be limited due to the relatively small temporal and spatial overlap between the proposed survey and any areas used by marine mammal prey species. The proposed use of airguns as part of an active seismic array survey would occur over a relatively short time period (~32 days) at two locations and would occur over a very small area relative to the area available as marine mammal habitat in the Pacific Ocean near Hawaii and the Emperor Seamounts. We believe any impacts to marine mammals due to adverse affects to their prey would be insignificant due to the limited spatial and temporal impact of the proposed survey. However, adverse impacts may occur to a few species of fish and to zooplankton.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they would also likely be of short duration and transient in any given area due to the nature of these surveys. As described previously, exploratory surveys such as these cover a large area but would be transient rather than focused in a given location over time and therefore would not be considered chronic in any given location.

In summary, activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat or populations of fish species or on the quality of acoustic habitat. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

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 primarily be by Level B harassment, as use of seismic airguns has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) for mysticetes and high frequency cetaceans (*i.e.,* kogiidae spp.), due to larger predicted auditory injury zones for those functional hearing groups. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

Auditory injury is unlikely to occur for mid-frequency species given very small modeled zones of injury for those species (13.6 m). Moreover, the source level of the array is a theoretical definition assuming a point source and measurement in the far-field of the source (MacGillivray, 2006). As described by Caldwell and Dragoset (2000), an array is not a point source, but one that spans a small area. In the far-field, individual elements in arrays will effectively work as one source because individual pressure peaks will have coalesced into one relatively broad pulse. The array can then be considered a ''point source.'' For distances within the near-field, *i.e.,* approximately 2–3 times the array dimensions, pressure peaks from individual elements do not arrive simultaneously because the observation point is not equidistant from each element. The effect is destructive interference of the outputs of each element, so that peak pressures in the near-field will be significantly lower than the output of the largest individual element. Here, the 230 dB peak isopleth distances would in all cases be expected to be within the near-field of the array where the definition of source level breaks down. Therefore, actual locations within this distance of the array center where the sound level exceeds 230 dB peak SPL would not necessarily exist. In general, Caldwell and Dragoset (2000) suggest that the near-field for airgun arrays is considered to extend out to approximately 250 m.

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 exposure estimate and associated numbers of take proposed for authorization.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment 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.* 2012). Based on the best available science and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses 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 to fall under Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) sources. L–DEO's proposed activity includes the use of impulsive seismic sources. Therefore, the 160 dB re 1 μPa (rms) criteria is applicable for analysis of level B harassment.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 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). The Technical Guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, reflects the best available science, and better predicts the potential for auditory injury than does NMFS' historical criteria.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in Table 2 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance. As described above, L–DEO's proposed activity includes the use of intermittent and impulsive seismic sources.

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT IN MARINE MAMMALS

Hearing group	PTS onset thresholds	
	Impulsive *	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.

Note: * 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 (Lpk) has a reference value of 1 μPa, and cumulative sound exposure level (LE) 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 estimating the area ensonified above the relevant acoustic thresholds.

The proposed surveys would acquire data with the 36-airgun array with a total discharge of 6,600 in^3 at a maximum tow depth of 12 m. L–DEO model results are used to determine the 160-dBrms radius for the 36-airgun array and 40-in^3 airgun at a 12-m tow depth in deep water (≤1000 m) down to a maximum water depth of 2,000 m. Received sound levels were predicted by L–DEO's model (Diebold *et al.,* 2010) which uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (approximately 1600 m), intermediate water depth on the slope (approximately 600–1100 m), and shallow water (approximately 50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.* 2009; Diebold *et al.* 2010).

For deep and intermediate-water cases, the field measurements cannot be used readily to derive Level A and Level B isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–500 m, which may not intersect all the sound pressure level (SPL) isopleths at their widest point from the sea surface down to the maximum relevant water depth for marine mammals of ~2,000 m. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data

recorded at the deep and slope sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate-water depths, comparisons at short ranges between sound levels for direct arrivals recorded by the calibration hydrophone and model results for the same array tow depth are in good agreement (Fig. 12 and 14 in Appendix H of NSF–USGS, 2011). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent. Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the GoM calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

For deep water (>1,000 m), L–DEO used the deep-water radii obtained from model results down to a maximum water depth of 2000 m. The radii for intermediate water depths (100–1,000 m) were derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (See Fig. 16 in Appendix H of NSF–USGS, 2011).

Measurements have not been reported for the single 40-in^3 airgun. L–DEO model results are used to determine the 160-dB (rms) radius for the 40-in^3 airgun at a 12 m tow depth in deep water (See LGL 2018, Figure A–2). For intermediate-water depths, a correction factor of 1.5 was applied to the deep-water model results.

L–DEO's modeling methodology is described in greater detail in the IHA application (LGL 2018). The estimated distances to the Level B harassment isopleth for the *Langseth's* 36-airgun array and single 40-in^3 airgun are shown in Table 3.

TABLE 3—PREDICTED RADIAL DISTANCES FROM R/V LANGSETH SEISMIC SOURCE TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Source and volume	Tow depth (m)	Water depth (m)	Predicted distances (in m) to the 160-dB received sound level
Single Bolt airgun, 40 in^3	12	>1000	[1] 431
		100–1000	[2] 647
4 strings, 36 airguns, 6,600 in^3	12	>1000	[1] 6,733
		100–1000	[2] 10,100

[1] Distance is based on L–DEO model results.
[2] Distance is based on L–DEO model results with a 1.5 × correction factor between deep and intermediate water depths.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the NUCLEUS software program and the NMFS User Spreadsheet, described below. The updated acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS 2016). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for SEL_{cum} and peak SPL for the *Langseth* airgun array were derived from calculating the modified farfield signature (Table 4). The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. L–DEO used the acoustic modeling methodology as used for Level B harassment with a small grid step of 1 m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid.

TABLE 4—MODELED SOURCE LEVELS BASED ON MODIFIED FARFIELD SIGNATURE FOR THE R/V LANGSETH 6,600 IN^3 AIRGUN ARRAY, AND SINGLE 40 IN^3 AIRGUN

	Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	Phocid pinnipeds (underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	Otariid pinnipeds (underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)
6,600 in^3 airgun array (Peak SPL_{flat})	252.06	252.65	253.24	252.25	252.52
6,600 in^3 airgun array (SEL_{cum})	232.98	232.83	233.08	232.83	232.07
40 in^3 airgun (Peak SPL_{flat})	223.93	N.A.	223.92	223.95	N.A.
40 in^3 airgun (SEL_{cum})	202.99	202.89	204.37	202.89	202.35

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the *Langseth's* airgun array (modeled in 1 hertz (Hz) bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (*i.e.,* to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities and shot intervals specific to each of the three planned surveys (Table 1), potential radial distances to auditory injury zones were then calculated for SEL_{cum} thresholds.

Inputs to the User Spreadsheets in the form of estimated SLs are shown in Table 5. User Spreadsheets used by L–DEO to estimate distances to Level A harassment isopleths for the 36-airgun array and single 40 in^3 airgun for the surveys are shown is Tables A–2, A–3, A–5, and A–8 in Appendix A of the IHA application (LGL 2018). Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the surveys are shown in Table 5. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL_{cum} and Peak SPL_{flat}) is exceeded (*i.e.,* metric resulting in the largest isopleth).

TABLE 5—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

	Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	Phocid pinnipeds (underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	Otariid pinnipeds (underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)
6,600 in^3 airgun array (Peak SPL_{flat})	38.9	13.6	268.3	43.7	10.6
6,600 in^3 airgun array (SEL_{cum})	320.2	N.A.	N.A.	N.A.	N.A.
40 in^3 airgun (Peak SPL_{flat})	1.76	N.A.	12.5	1.98	N.A.
40 in^3 airgun (SEL_{cum})	2.38	N.A.	N.A.	N.A.	N.A.

Note that because of some of the assumptions included in the methods used, isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimate of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 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 mobile sources, such as the proposed seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. The best available scientific information was considered in conducting marine mammal exposure estimates (the basis for estimating take).

In the proposed survey area in the Hawaiian EEZ, densities from Bradford *et al.* (2017) were used, when available. For the pygmy sperm whale, dwarf sperm whale, and spinner dolphin, densities from Barlow *et al.* (2009) were used because densities were not provided by Bradford *et al.* (2017). For the humpback, minke, and killer whales, the calculated take was increased to mean group size, based on Bradford *et al.* (2017). For Hawaiian monk seals, NMFS recommended following the methods used by the U.S. Navy (Navy 2017a) to determine densities. L–DEO followed a similar method, but did not correct for hauled out animals as haul-out sites are not accessible in offshore areas. We determined density by dividing the number of animals expected to occur in the Hawaiian EEZ in water depths >200 m. According to the U.S. Navy (Navy 2017a), 90 percent of the population may be found within the 200-m isobath; therefore 10 percent of the population (127 of 1272 animals; Carretta *et al.* 2017) is expected to occur outside of the 200-m isobath. The area within the Hawaii EEZ but outside of the 200-m isobath was estimated by the U.S. Navy to be 2,461,994 km^2 (Navy 2017a). Thus, we estimated the average density of monk seals at sea where they could be

exposed to seismic sounds as 127/2,461,994 km² = 0.0000517/km². No haul-out factors were used to adjust this density, as it is not possible that animals would haul out beyond the 200-m isobath. Densities for the Hawaii portion of the survey are shown in Table 7.

There are very few published data on the densities of cetaceans or pinnipeds in the Emperor Seamounts area, so NMFS relied on a range of sources to establish marine mammal densities. As part of the Navy's Final Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement for SURTASS LFA Sonar Routine Training, Testing, and Military Operations, the Navy modelled densities for a designated mission area northeast of Japan during the summer season. These values were used for the North Pacific right whale, sei whale, fin whale, sperm whale, Cuvier's beaked whale, Stejneger's beaked whale, and Baird's beaked whale.

For northern right whale dolphin, Dall's porpoise, and northern fur seal, L–DEO used densities from Buckland *et al.* (1993). Forney and Wade (2006) reported a density of 0.3/100 km² for killer whales at latitudes 43–48° N where the proposed survey would be conducted. Although Miyashita (1993) published data on the abundance of striped, Pantropical spotted, bottlenose, and Risso's dolphins, and false killer and short-finned pilot whales in the Northwest Pacific Ocean as far north as 41° N, the distributional range of the Pantropical spotted and bottlenose dolphins does not extend as far north as the proposed survey area. For the other species, we used data from 40–41° N, 160–180° E to calculate densities and estimate the numbers of individuals that could be exposed to seismic sounds during the proposed survey. Risso's dolphin, false killer whale, and short-finned pilot whale are expected to be rare in the proposed survey area, and the calculated densities were zero. Thus, we used the mean group size from Bradford *et al.* (2017) for Risso's dolphin and short-finned pilot whale, and the mean group size of false killer whales from Barlow (2006).

The short-beaked common dolphin is expected to be rare in the Emperor Seamounts survey area; thus, there are no density estimates available. L–DEO used the mean group size (rounded up) for the California Current from Barlow (2016). The density of Bryde's whale in the proposed survey area was assumed to be zero, based on information from Hakamada *et al.* (2009, 2017) and Forney *et al.* (2015); its known distribution range does not appear to extend that far north. For this species, L–DEO rounded up the mean group size from Bradford *et al.* (2017). For pygmy and dwarf sperm whales NMFS assumed densities in the Emperor Seamounts would be equivalent to those in the Hawaii survey are and used densities from Bradford *et al.* 2017.

The densities for the remaining species were obtained from calculations using data from the papers presented to the IWC. For blue and humpback whales, L–DEO used a weighted mean density from Matsuoka *et al.* (2009) for the years 1994–2007 and Hakamada and Matsuoka (2015) for the years 2008–2014. L–DEO used Matsuoka *et al.* (2009) instead of Matsuoka *et al.* (2015), as the later document did not contain all of the necessary information to calculate densities. L–DEO used densities for their Block 9N which coincides with the proposed Emperor Seamounts survey area. The density for each survey period was weighted by the number of years in the survey period; that is, 14 years for Matsuoka *et al.* (2009) and 7 years for Hakamada and Matsuoka (2015), to obtain a final density for the 21-year period. For minke whales L–DEO used the estimates of numbers of whales in survey blocks overlapping the Emperor Seamounts survey area from Hakamada *et al.* (2009); densities were estimated by dividing the number of whales in Block 9N by the area of Block 9N. For gray whales, NMFS used a paper by Rugh *et al.* (2005) that looked at abundance of eastern DPS gray whales. The paper provides mean group sizes for their surveys, which ranged from 1 to 2 individuals. For purposes of estimating exposures we will assume that the western DPS group sizes would not vary greatly from the eastern DPS. As such, NMFS assumes that there will be two western DPS gray whales Level B takes, based on mean group size.

Finally, no northern elephant seals have been reported during any of the above surveys although Buckland *et al.* (1993) estimated fur seal abundance during their surveys. Telemetry studies, however, indicate that elephant seals do forage as far west as the proposed Emperor Seamounts survey area. Here, L–DEO assumed a density of 0.00831/1000 km², which is 10 percent of that used by LGL Limited (2017) for an area off the west coast of the United States. However, densities of northern elephant seals in the region are expected to be much less than densities of northern fur seals. For species that are unlikely to occur in the survey area, such as ribbon seals, proposed exposures are set at 5 individuals. Densities for Emperor are shown in Table 8.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A harassment or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A harassment and Level B harassment thresholds. The area estimated to be ensonified in a single day of the survey is then calculated (Table 6), based on the areas predicted to be ensonified around the array and the estimated trackline distance traveled per day. This number is then multiplied by the number of survey days. Active seismic operations are planned for 13 days at Emperor Seamounts and 19 days at Hawaii.

TABLE 6—AREAS (km²) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS, PER DAY FOR HAWAII AND EMPEROR SEAMOUNTS SURVEYS

Survey	Criteria	Daily ensonified area (km²)	Total survey days	25% increase	Total ensonified area (km²)	Relevant isopleth (m)
Hawaii Level B						
Multi-depth line (intermediate water)	160 dB	538.5	12	1.25	8076.9	10,100
Multi-depth line (deep water)	160 dB	2349.8	12	1.25	35246.4	6,733

TABLE 6—AREAS (km²) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS, PER DAY FOR HAWAII AND EMPEROR SEAMOUNTS SURVEYS—Continued

Survey	Criteria	Daily ensonified area (km²)	Total survey days	25% increase	Total ensonified area (km²)	Relevant isopleth (m)
Multi-depth line (total)	160 dB	2888.2	12	1.25	43323.3	6,733
Deep-water line	160 dB	2566.3	7	1.25	22455.1	6,733
Hawaii Level A [1]						
Hawaii	LF Cetacean	115.6	19	1.25	2745.4	320.2
	MF Cetacean	4.9	19	1.25	116.3	13.6
	HF Cetacean	96.8	19	1.25	2299.3	268.3
	Phocid	15.7	19	1.25	373.8	43.7
Emperor Seamounts Level B						
Emperor Seamounts	160 dB	2566.3	13	1.25	41702.4	6,733
Emperor Seamounts Level A [1]						
Emperor Seamounts	LF Cetacean	115.6	13	1.25	1878.4	320.2
	MF Cetacean	4.9	13	1.25	79.6	13.6
	HF Cetacean	96.8	13	1.25	1573.2	268.3
	Phocid	15.7	13	1.25	255.7	43.7
	Otariid	3.8	13	1.25	62	10.6

[1] Level A ensonified areas are estimated based on the greater of the distances calculated to Level A isopleths using dual criteria (SEL_{cum} and $_{peak}SPL$).

The product is then multiplied by 1.25 to account for the additional 25 percent contingency. This results in an estimate of the total areas (km²) expected to be ensonified to the Level A harassment and Level B harassment thresholds. For purposes of Level B take calculations, areas estimated to be ensonified to Level A harassment thresholds are subtracted from total areas estimated to be ensonified to Level B harassment thresholds in order to avoid double counting the animals taken (*i.e.,* if an animal is taken by Level A harassment, it is not also counted as taken by Level B harassment). The marine mammals predicted to occur within these respective areas, based on estimated densities, are assumed to be incidentally taken.

Estimated exposures for the Hawaii survey and the Emperor Seamounts survey are shown respectively in Table 7 and Table 8.

TABLE 7—DENSITIES, ESTIMATED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK OR POPULATION EXPOSED DURING HAWAII SURVEY

Species	Stock	Density (#/1000 km²)	Total exposures	Level A	Level B	Percentage of stock/ population	Takes proposed for authorization	
							Level A	Level B
Mysticetes:								
Humpback Whale	Central North Pacific.		[4] 2		2	<0.01	0	2
	Western North Pacific.			0.2				
Minke whale	Hawaii	[3] 0	[4] 1	0	0	<0.01	0	1
Bryde's whale	Hawaii	[1] 0.72	49	2	47	2.8	2	47
Sei whale	Hawaii	[1] 0.16	11	0	11	6.2	0	11
Fin whale	Hawaii	[1] 0.06	4	0	4	2.7	0	4
Blue whale	Central north Pacific.	[1] 0.05	5	0	5	3.9	0	5
Odontocetes:								
Sperm whale	Hawaii	[1] 1.86	122	0	122	2.7	0	122
Pygmy sperm whale	Hawaii	[2] 2.91	198	7	191	2.8	7	191
Dwarf sperm whale	Hawaii	[2] 7.14	486	16	470	2.8	16	470
Cuvier's beaked whale	Hawaii pelagic	[1] 0.30	20	0	20	2.7	0	20
Longman's beaked whale	Hawaii	[1] 3.11	205	0	205	2.7	0	205
Blainville's beaked whale	Hawaii pelagic	[1] 0.86	57	0	57	2.7	0	57
Ginkgo-toothed beaked whale	N/A	[6] 0.63	41	0	41	0.16	0	41
Deraniygala's beaked whale	N/A	[6] 0.63	41	0	41	0.16	0	41
Hubb's beaked whale	N/A	[6] 0.63	41	0	41	0.16	0	41
Rough-toothed dolphin	Hawaii	[1] 29.63	1,952	3	1,949	2.7	0	1,952
Common bottlenose dolphin	HI Pelagic	[1] 8.99	592	1	591	[7] 2.7	0	592
	Oahu	0.4						
	4 islands	1.5						
	HI Islands	2.3						
Pantropical spotted dolphin	HI Pelagic	[1] 23.32	1,534	3	1531	[8] 1.3	0	1,354

TABLE 7—DENSITIES, ESTIMATED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK OR POPULATION EXPOSED DURING HAWAII SURVEY—Continued

Species	Stock	Density (#/1000 km^2)	Total exposures	Level A	Level B	Percentage of stock/ population	Takes proposed for authorization	
							Level A	Level B
	Oahu	N.A.						
	4 island	N.A.						
	HI Islands	N.A.						
Spinner dolphin	HI Pelagic	[2] 6.99	461	1	460	N.A.	0	461
	HI Island					[9] 10.9		
	Oahu/4 island					19.4		
Striped dolphin	HI Pelagic	[1] 5.36	354	1	353	0.6	0	354
Fraser's dolphin	Hawaii	[1] 21.0	1,383	2	1381	2.7	0	1,383
Risso's dolphin	Hawaii	[1] 4.74	313	1	312	2.7	0	313
Melon-headed whale	HI Islands	[1] 3.54	233	0	233	[10] 2.4	0	233
	Kohala resident					5.2		
Pygmy killer whale	Hawaii	[1] 4.35	287	1	286	2.7	0	287
False killer whale	MHI Insular	[5] 0.0.09	6	0	6	3.5	0	6
	HI Pelagic	[5] 0.06	4	0	4	0.26	0	4
Killer whale	Hawaiian Islands	[1] 0.06	[4] 5	0	4	2.7	0	5
Short-finned pilot whale	Hawaii	[1] 7.97	525	1	524	2.7	0	525
Pinnipeds:								
Hawaiian monk seal	Hawaii	[3] 0.051	3	0	3	0.15	0	3

[1] Bradford *et al.* 2017.
[2] Barlow *et al.* 2009.
[3] U.S. Department of the Navy. (2017a). U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area. NAVFAC Pacific Technical Report. Naval Facilities Engineering Command Pacific, Pearl Harbor, HI. 274 pp. Navy, 2017.
[4] Requested take authorization (Level B only) increased to mean group size from Bradford *et al.,* 2017.
[5] Bradford *et al.* 2015.
[6] From Bradford *et al.* (2017) for 'Unidentified *Mesoplodon'* proportioned equally among *Mesoplodon* spp., except M. *densirostris.*
[7] Assumes 98.5 percent of proposed takes are from Hawaii pelagic stock (583) with remaining 9 animals split evenly among Oahu, 4 Islands, and Hawaiian Islands stock.
[8] Assumes 50 percent of proposed takes are from Hawaii pelagic stock (767) since most sightings occur in waters between 1,500 -5,000 m. The remainder are split evenly (256) between Hawaiian Islands, 4 islands, and Oahu stocks. Populations of insular stocks are unknown.
[9] Assumes 70 percent of proposed takes from Hawaii pelagic stock (323) since most of the survey tracklines will occur outside of boundary ranges of Hawaii Island and Oahu/4 island stocks. Assumes remaining takes (138) are split evenly between Hawaii Island (69) and Oahu/4 island (69) stocks.
[10] Assumes 90 percent of takes from Hawaiian Islands stock (210) and 10 percent from Kohala resident stock which has a small range.

TABLE 8—DENSITIES, ESTIMATED LEVEL A AND LEVEL B EXPOSURES, PERCENTAGE OF STOCK OR POPULATION EXPOSED, AND NUMBER OF TAKES PROPOSED FOR AUTHORIZATION DURING EMPEROR SEAMOUNTS SURVEY

Species	Stock	Estimated density (#/1000 km^2)	Total exposures	Level A takes	Level B takes	% of Pop. (total takes)	Takes proposed for authorization	
							Level A	Level B
Mysticetes.								
Gray whale	N/A	N.A.	[2] 2	0	2	1.43	0	2
North Pacific right whale	N/A/	[1] 0.01	[10] 2	0	0	0.44	0	2
Humpback whale	Central North Pacific.	[1] 0.41	16	1	15	[11] 0.16	1	16
	Western North Pacific DPS.	2	0	2	[11] 0.18	0	2	
Minke whale	N/A	2.48	108	5	103	0.49	5	108
Bryde's whale	N/A	N.A.	[3] 2	N.A.	N.A.	<0.01	0	2
Sei whale	N/A	[1] 0.29	13	1	12	0.05	1	12
Fin whale	N/A	[1] 0.20	9	0	8	0.06	0	8
Blue whale	Central north Pacific.	0.13	5	0	5	3.7	0	5
Odontocetes:								
Sperm whale	N/A	[1] 2.20	92	0	92	0.31	0	92
Pygmy sperm whale	N/A	[4] 2.91	126	5	121	1.76	5	121
Dwarf sperm whale	N/A	[4] 7.14	309	11	298	1.76	11	298
Cuvier's beaked whale	N/A	[1] 5.40	225	0	225	1.13	0	225
Stejner's beaked whale	Alaska	[1] 0.5	21	0	21	0.08	0	21
Baird's beaked whale	N/A	[1] 2.9	121	0	121	1.19	0	121
Short-beaked common dolphin	N/A	[5] 180	N.A.	N.A.	N.A.	<0.01	0	180
Striped dolphin	N/A	[6] 9.21	385	1	384	0.04	0	385
Pacific white-sided dolphin	N/A	[7] 68.81	2,875	5	2,870	0.29	0	2,875
Northern right whale dolphin	N/A	[7] 3.37	141	0	141	0.05	0	141
Risso's dolphin	N/A	[3] 27	1,128	2	1,126	1.02	0	1,128
False killer whale	N/A	[5] 10	418	1	417	2.51	0	418
Killer whale	N/A	[8] 3.00	125	0	125	1.47	0	125
Short-finned pilot whale	N/A	[3] 41	1,713	3	1,710	3.2	0	1,713
Dall's porpoise	N/A	35.46	1,535	56	1,479	0.13	56	1,479
Pinnipeds:								
Northern fur seal	N/A	[7] 3.56	149	0	148	0.01	0	148
Northern elephant seal	N/A	8.31	349	2	347	0.16	2	347
Ribbon seal	Alaska	N.A.	[9] 5	0	5	<0.01	0	5

[1] Navy 2017b. Final Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement.

[2] Mean group size based on Rugh *et al.* (2005).
[3] Mean group size from Bradford *et al.* (2017).
[4] Bradford *et al.* (2017).
[5] Mean group size from Barlow (2016).
[6] Miyashita (1993).
[7] Buckland *et al.* (1993).
[8] Forney and Wade (2006).
[9] Estimated exposures increased to 5 for pinnipeds.
[10] Mean group size from Matsuoka *et al.* (2009).
[11] Based on population size, take is split proportionally between central north Pacific (91.2 percent of total take) and western north Pacific DPS stocks (9.8 percent of total take).

Estimated exposures are tabulated in Table 7 and Table 8. The sum will be the total number of takes proposed for authorization. Table 7 and Table 8 contain the numbers of animals proposed for authorized take.

It should be noted that the proposed take numbers shown in Tables 7 and 8 are expected to be conservative for several reasons. First, in the calculations of estimated take, 25 percent has been added in the form of operational survey days to account for the possibility of additional seismic operations associated with airgun testing and repeat coverage of any areas where initial data quality is sub-standard, and in recognition of the uncertainties in the density estimates used to estimate take as described above. Additionally, marine mammals would be expected to move away from a loud sound source that represents an aversive stimulus, such as an airgun array, potentially reducing the number of Level A takes. However, the extent to which marine mammals would move away from the sound source is difficult to quantify and is, therefore, not accounted for in the take estimates.

Note that for some marine mammal species, we propose to authorize a different number of incidental takes than the number of incidental takes requested by L–DEO (see Table 5 and Table 6 in the IHA application for requested take numbers).

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,.

L–DEO has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of proposed mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO has proposed to implement mitigation measures for marine mammals. Mitigation measures that would be adopted during the proposed surveys include (1) Vessel-based visual mitigation monitoring; (2) Vessel-based passive acoustic monitoring; (3) Establishment of an exclusion zone; (4) Power down procedures; (5) Shutdown procedures; (6) Ramp-up procedures; and (7) Vessel strike avoidance measures.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual PSOs) to scan the ocean surface visually for the presence of marine mammals. The area to be scanned visually includes primarily the exclusion zone, but also the buffer zone. The buffer zone means an area beyond the exclusion zone to be monitored for the presence of marine mammals that may enter the exclusion zone. During pre-clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the exclusion zone in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 meter exclusion zone, out to a radius of 1,000 meters from the edges of the airgun array (500–1,000 meters). Visual monitoring of the exclusion zones and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring close to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to naïve marine mammals that may be in the area during pre-clearance, and (2) during airgun use, aid in establishing and maintaining the exclusion zone by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the exclusion zone.

L–DEO must use at least five dedicated, trained, NMFS-approved Protected Species Observers (PSOs). The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs aboard the vessel must have a minimum of 90 days at-sea

experience working in those roles, respectively, during a deep penetration (*i.e.,* ''high energy'') seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of the airgun array. Visual monitoring of the exclusion and buffer zones must begin no less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs shall establish and monitor the exclusion and buffer zones. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source (*i.e.,* anytime airguns are active, including ramp-up), occurrences of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown or powerdown of the acoustic source.

During use of the airgun (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the buffer zone (but outside the exclusion zone) should be communicated to the operator to prepare for the potential shutdown or powerdown of the acoustic source. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable. Visual PSOs may be on watch for a maximum of two consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Passive Acoustic Monitoring

Acoustic monitoring means the use of trained personnel (sometimes referred to as passive acoustic monitoring (PAM) operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an exclusion zone around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.,* due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

Passive acoustic monitoring (PAM) would take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring would serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It would be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The *R/V Langseth* will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source. Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional two hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids) detected solely by PAM in the applicable exclusion zone in the previous two hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and
- Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of four hours in any 24-hour period.

Establishment of an Exclusion Zone and Buffer Zone

An exclusion zone (EZ) is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs would establish a minimum EZ with a 500 m radius for the 36 airgun array. The 500 m EZ would be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the acoustic source would be shut down.

The 500 m EZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SELcum and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Additionally, a 500 m EZ is expected to minimize the likelihood that marine

mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions.

Pre-Clearance and Ramp-Up

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array's airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-clearance observation (30 minutes) is to ensure no protected species are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only time observations of protected species in the buffer zone would prevent operations (*i.e.,* the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic operations and to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the exclusion and buffer zones for 30 minutes prior to the initiation of ramp-up (pre-clearance).
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in.
- One of the PSOs conducting pre-clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.
- Ramp-up may not be initiated if any marine mammal is within the applicable exclusion or buffer zone. If a marine mammal is observed within the applicable exclusion zone or the buffer zone during the 30 minute pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and 30 minutes for all other species).
- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed.
- PSOs must monitor the exclusion and buffer zones during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the applicable exclusion zone. Once ramp-up has begun, observations of marine mammals within the buffer zone do not require shutdown or powerdown, but such observation shall be communicated to the operator to prepare for the potential shutdown or powerdown.
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances.
- If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than that described for shutdown and powerdown (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable exclusion zone. For any longer shutdown, pre-clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-clearance watch of 30 min is not required.
- Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance of 30 min.

Shutdown and Powerdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array while a powerdown requires immediate de-activation of all individual airgun elements of the array except the single 40-in^3 airgun. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown or powerdown of the acoustic source if a marine mammal is detected within the applicable exclusion zone. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown and powerdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up and powerdown) and (1) a marine mammal appears within or enters the applicable exclusion zone and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable exclusion zone, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the EZ. If the acoustic PSO cannot confirm presence within the EZ, visual PSOs will be notified but shutdown is not required.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the 500 m EZ. The animal would be considered to have cleared the 500 m EZ if it is visually observed to have departed the 500 m EZ, or it has not been seen within the 500 m EZ for 15 min in the case of small odontocetes and pinnipeds, or 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

The shutdown requirement can be waived for small dolphins in which case the acoustic source shall be powered down to the single 40-in^3 airgun if an individual is visually detected within the exclusion zone. As defined here, the small delphinoid group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes

of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement would apply solely to specific genera of small dolphins—*Tursiops, Delphinus, Lagenodelphis, Lagenorhynchus, Lissodelphis, Stenella and Steno*—The acoustic source shall be powered down to 40-in^3 airgun if an individual belonging to these genera is visually detected within the 500 m exclusion zone.

b. Powerdown conditions shall be maintained until delphinids for which shutdown is waived are no longer observed within the 500 m exclusion zone, following which full-power operations may be resumed without ramp-up. Visual PSOs may elect to waive the powerdown requirement if delphinids for which shutdown is waived to be voluntarily approaching the vessel for the purpose of interacting with the vessel or towed gear, and may use best professional judgment in making this decision.

We include this small delphinoid exception because power-down/shutdown requirements for small delphinoids under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small delphinoids are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small delphinoids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012). The potential for increased shutdowns resulting from such a measure would require the Langseth to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinoids) are no more likely to incur auditory injury than are small delphinoids, they are much less likely to approach vessels. Therefore, retaining a power-down/shutdown requirement for large delphinoids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a power-down/shutdown requirement for large delphinoids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

Powerdown conditions shall be maintained until the marine mammal(s) of the above listed genera are no longer observed within the exclusion zone, following which full-power operations may be resumed without ramp-up. Additionally, visual PSOs may elect to waive the powerdown requirement if the small dolphin(s) appear to be voluntarily approaching the vessel for the purpose of interacting with the vessel or towed gear, and may use best professional judgment in making this decision. Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger exclusion zone). If PSOs observe any behaviors in a small delphinid for which shutdown is waived that indicate an adverse reaction, then powerdown will be initiated immediately.

Upon implementation of shutdown, the source may be reactivated after the marine mammal(s) has been observed exiting the applicable exclusion zone (*i.e.,* animal is not required to fully exit the buffer zone where applicable) or following 15 minutes for small odontocetes and 30 minutes for all other species with no further observation of the marine mammal(s).

Vessel Strike Avoidance

These measures apply to all vessels associated with the planned survey activity; however, we note that these requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply. These measures include the following:

1. Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should be exercised when an animal is observed. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (specific distances detailed below), to ensure the potential for strike is minimized. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal to broad taxonomic group (*i.e.,* as a large whale or other marine mammal).

2. Vessel speeds must be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of any marine mammal are observed near a vessel.

3. All vessels must maintain a minimum separation distance of 100 m from large whales (*i.e.,* sperm whales and all baleen whales.

4. All vessels must attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel.

5. When marine mammals are sighted while a vessel is underway, the vessel should take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel should reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This recommendation does not apply to any vessel towing gear.

We have carefully evaluated the suite of mitigation measures described here and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the proposed measures, NMFS has preliminarily determined that the 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 action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations and nighttime start ups (if applicable) of the airguns. During seismic operations, at least five visual PSOs would be based aboard the *Langseth.* Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 × 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel.
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals. (c) PSOs must have the following requirements and qualifications:
- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider.
- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards),
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working.
- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand.
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course.
- NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved.
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics.
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

For data collection purposes, PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

- Vessel names (source vessel and other vessels associated with survey) and call signs;
- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Date and participants of PSO briefings;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;

• Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;

• Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.,* vessel traffic, equipment malfunctions); and

• Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

The following information should be recorded upon visual observation of any protected species:

• Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

• PSO who sighted the animal;

• Time of sighting;

• Vessel location at time of sighting;

• Water depth;

• Direction of vessel's travel (compass direction);

• Direction of animal's travel relative to the vessel;

• Pace of the animal;

• Estimated distance to the animal and its heading relative to vessel at initial sighting;

• Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;

• Estimated number of animals (high/low/best);

• Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);

• Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

• Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);

• Animal's closest point of approach (CPA) and/or closest distance from any element of the acoustic source;

• Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other); and

• Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a marine mammal is detected while using the PAM system, the following information should be recorded:

• An acoustic encounter identification number, and whether the detection was linked with a visual sighting;

• Date and time when first and last heard;

• Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal);

• Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

A report would be submitted to NMFS within 90 days after the end of the cruise. The report would describe the operations that were conducted and sightings of marine mammals near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those on the trackline but not detected.

L–DEO will be required to shall submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of protected species near the activities, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all protected species sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as described above and the IHA. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any 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' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 7 and 8, given that NMFS expects the anticipated effects of the proposed seismic survey to be similar in nature.

Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of L–DEO's proposed survey, even in the absence of proposed mitigation. Thus the proposed authorization does not authorize any mortality. As discussed in the *Potential Effects* section, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

We propose to authorize a limited number of instances of Level A harassment of 18 species and Level B harassment of 39 marine mammal species. However, we believe that any PTS incurred in marine mammals as a result of the proposed activity would be in the form of only a small degree of PTS, not total deafness, and would be unlikely to affect the fitness of any individuals, because of the constant movement of both the *Langseth* and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time (*i.e.,* since the duration of exposure to loud sounds will be relatively short). Also, as described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the *Langseth's* approach due to the vessel's relatively low speed when conducting seismic surveys. We expect that the majority of takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

Potential impacts to marine mammal habitat were discussed previously in this document (see *Potential Effects of the Specified Activity on Marine Mammals and their Habitat*). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.,* 1995). Prey species are mobile and are broadly distributed throughout the project areas; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the relatively short duration (~32 days) and temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

The activity is expected to impact a small percentage of all marine mammal stocks that would be affected by L–DEO's proposed survey (less than 20 percent of all species). Additionally, the acoustic ''footprint'' of the proposed survey would be small relative to the ranges of the marine mammals that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the proposed survey area.

The proposed mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via power downs and/or shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the proposed mitigation will be effective in preventing at least some extent of potential PTS in marine mammals that may otherwise occur in the absence of the proposed mitigation.

The ESA-listed marine mammal species under our jurisdiction that are likely to be taken by the proposed surveys include the endangered sei, fin, blue, sperm, gray, North Pacific Right, Western North Pacific DPS humpback, and Main Hawaiian Islands Insular DPS false killer whale as well as the Hawaiian monk seal. We propose to authorize very small numbers of takes for these species relative to their population sizes. Therefore, we do not expect population-level impacts to any of these species. The other marine mammal species that may be taken by harassment during the proposed survey are not listed as threatened or endangered under the ESA. With the exception of the northern fur seal, none of the non-listed marine mammals for which we propose to authorize take are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

The tracklines of the Hawaii survey either traverse or are proximal to BIAs for 11 species that NMFS has proposed to authorize for take. Ten of the BIAs pertain to small and resident cetacean populations while a breeding BIA has been delineated for humpback whales. However, this designation is only applicable to humpback whales in the December through March timeframe (Baird *et al.,* 2015). Since the Hawaii survey is proposed for August, there will be no effects on humpback whales. For cetacean species with small and resident BIAs in the Hawaii survey area, that designation is applicable year-round. There are 19 days of seismic operations proposed for the Hawaii survey. Only a portion of those days would maintain seismic operations along Tracklines 1 and 2. No physical impacts to BIA habitat are anticipated from seismic activities. While SPLs of sufficient strength have been known to cause injury to fish and fish mortality, the most likely impact to prey species from survey activities would be temporary avoidance of the affected area. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is expected. Given the short operational seismic time near or traversing BIAs, as well as the ability of cetaceans and prey species to move away from acoustic sources, NMFS expects that there would be, at worst, minimal impacts to animals and habitat within the designated BIAs.

NMFS concludes that exposures to marine mammal species and stocks due to L–DEO's proposed survey would result in only short-term (temporary and short in duration) effects to individuals exposed. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival.

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 marine mammal species or stocks through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- The proposed activity is temporary and of relatively short duration (~32 days);

• The anticipated impacts of the proposed activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel;

• The number of instances of PTS that may occur are expected to be very small in number. Instances of PTS that are incurred in marine mammals would be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);

• The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity;

• The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the proposed survey would be temporary and spatially limited;

• The proposed mitigation measures, including visual and acoustic monitoring, power-downs, and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the 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; 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. Tables 7 and 8 provide numbers of take by Level A harassment and Level B harassment proposed for authorization. These are the numbers we use for purposes of the small numbers analysis.

The numbers of marine mammals that we propose for authorized take would be considered small relative to the relevant populations (19.4 percent for all species) for the species for which abundance estimates are available.

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.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

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 ESA Interagency Cooperation Division, whenever we propose to authorize take for endangered or threatened species.

The NMFS Permits and Conservation Division is proposing to authorize the incidental take of marine mammals which are listed under the ESA (the North Pacific right, sei, fin, blue, sperm whales, Western North Pacific DPS humpback whale, gray whale, the Hawaiian Islands Insular DPS false killer whale, and the Hawaiian monk seal. We have requested initiation of Section 7 consultation with the Interagency Cooperation Division for the issuance of this IHA. NMFS will conclude the ESA section 7 consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L–DEO for conducting seismic surveys in the Pacific Ocean near Hawaii in summer/early fall of 2018 and in the Emperor Seamounts area in spring/early summer 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. 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 a period of one year from the date of issuance.

2. This IHA is valid only for marine geophysical survey activity, as specified in L–DEO's IHA application and using an array aboard the R/V *Langseth* with characteristics specified in the IHA application, in the Pacific Ocean near the Main Hawaiian Islands and the Emperor Seamounts.

3. General Conditions

(a) A copy of a the IHA must be in the possession of the vessel operator, other relevant personnel, the lead PSO, and any other relevant designees operating under the authority of the IHA.

(b) L–DEO shall instruct relevant vessel personnel with regard to the authority of the protected species monitoring team, and shall ensure that relevant vessel personnel and the protected species monitoring team participate in a joint onboard briefing (hereafter PSO briefing) led by the vessel operator and lead PSO to ensure that responsibilities, communication procedures, protected species monitoring protocols, operational procedures, and IHA requirements are clearly understood. This PSO briefing must be repeated when relevant new personnel join the survey operations.

(c) The species authorized for taking are listed in Table 7 and 8. The taking, by Level A and Level B harassment only, is limited to the species and numbers listed in Table 7 and 8. Any taking exceeding the authorized amounts listed in Table 7 and 8 is prohibited and may result in the modification, suspension, or revocation of this IHA.

(d) The taking by serious injury or death of any species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) During use of the airgun(s), if marine mammal species other than those listed in Table 7 and 8 are detected by PSOs, the airgun array must be shut down.

4. Mitigation Requirements

The holder of this Authorization is required to implement the following mitigation measures:

(a) L–DEO must use at least five dedicated, trained, NMFS-approved Protected Species Observers (PSOs). The PSOs must have no tasks other than to conduct observational effort, record

observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

(b) At least one of the visual and two of the acoustic PSOs aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, during a deep penetration seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience.

(c) Visual Observation

(i) During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following and 30 minutes prior to and during nighttime ramp-ups of the airgun array.

(ii) Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

(iii) PSOs shall establish and monitor the exclusion and buffer zones. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source (*i.e.,* anytime airguns are active, including ramp-up), occurrences of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown or powerdown of the acoustic source.

(iv) Visual PSOs shall immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(v) During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

(vi) Visual PSOs may be on watch for a maximum of two consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO

(d) Acoustic Monitoring

(i) The source vessel must use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source.

(ii) Acoustic PSOs shall immediately communicate all detections to visual PSOs, when visual PSOs are on duty, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(iii) Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties may not exceed 12 hours per 24-hour period for any individual PSO.

(iv) Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional two hours without acoustic monitoring during daylight hours only under the following conditions:

a. Sea state is less than or equal to BSS 4;

b. With the exception of delphinids, no marine mammals detected solely by PAM in the applicable exclusion zone in the previous two hours;

c. NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and

d. Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of four hours in any 24-hour period.

(e) Exclusion zone and buffer zone

(i) PSO shall establish and monitor a 500 m exclusion zone and 1,000 m buffer zone. The exclusion zone encompasses the area at and below the sea surface out to a radius of 500 meters from the edges of the airgun array (0–500 meters). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 meter exclusion zone, out to a radius of 1000 meters from the edges of the airgun array (500–1,000 meters).

(f) Pre-clearance and Ramp-up

(i) A ramp-up procedure shall be required at all times as part of the activation of the acoustic source.

(v) Ramp-up may not be initiated if any marine mammal is within the exclusion or buffer zone. If a marine mammal is observed within the exclusion zone or the buffer zone during the 30 minute pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zone or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species).

(vi) Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes.

(vii) PSOs must monitor the exclusion and buffer zones during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the exclusion zone. Once ramp-up has begun, observations of marine mammals within the buffer zone do not require shutdown or powerdown, but such observation shall be communicated to the operator to prepare for the potential shutdown or powerdown.

(viii) Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up.

(ix) If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than that described for shutdown and powerdown (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable exclusion zone. For any longer shutdown, pre-clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-clearance watch of 30 min is not required.

(x) Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance of 30 min.

(g) Shutdown and Powerdown

(i) Any PSO on duty shall have the authority to delay the start of survey operations or to call for shutdown or powerdown of the acoustic source if a marine mammal is detected within the applicable exclusion zone.

(ii) The operator shall establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown and powerdown commands are conveyed swiftly while allowing PSOs to maintain watch.

(iii) When both visual and acoustic PSOs are on duty, all detections shall be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs.

(iv) When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up and powerdown) and (1) a marine mammal (excluding delphinids) appears within or enters the exclusion zone and/or (2) a marine mammal is detected acoustically and localized within the exclusion zone, the acoustic source shall be shut down. When shutdown is called for by a PSO, the airgun array shall be immediately deactivated. Any questions regarding a PSO shutdown shall be resolved after deactivation.

(v) Shutdown shall occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) (other than delphinids) in the 500 m exclusion zone. If the acoustic PSO cannot confirm presence within exclusion zone, visual PSOs shall be notified but shutdown is not required.

(v) The shutdown requirement shall be waived for small dolphins of the following genera: *Tursiops, Delphinus, Lagenodelphis, Lagenorhynchus, Lissodelphis, Stenella and Steno.*

a. The acoustic source shall be powered down to 40-in^3 airgun if an individual belonging to these genera is visually detected within the 500 m exclusion zone.

b. Powerdown conditions shall be maintained until delphinids for which shutdown is waived are no longer observed within the 500 m exclusion zone, following which full-power operations may be resumed without ramp-up. Visual PSOs may elect to waive the powerdown requirement if delphinids for which shutdown is waived to be voluntarily approaching the vessel for the purpose of interacting with the vessel or towed gear, and may use best professional judgment in making this decision.

d. If PSOs observe any behaviors in delphinids for which shutdown is waived that indicate an adverse reaction, then powerdown shall be initiated.

(vi) Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived).

(vii) Upon implementation of shutdown, the source may be reactivated after the marine mammal(s) has been observed exiting the applicable exclusion zone (*i.e.,* animal is not required to fully exit the buffer zone where applicable) or following a 30-minute clearance period with no further observation of the marine mammal(s).

(g) Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (specific distances detailed below), to ensure the potential for strike is minimized.

(i) Vessel speeds must be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of any marine mammal are observed near a vessel.

a. Vessels must maintain a minimum separation distance of 100 m from large whales (*i.e.,* sperm whales and all baleen whales.

b. Vessels must attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel.

c. When marine mammals are sighted while a vessel is underway, the vessel should take action as necessary to avoid violating the relevant separation distance. If marine mammals are sighted within the relevant separation distance, the vessel should reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This recommendation does not apply to any vessel towing gear.

5. Monitoring Requirements.

The holder of this Authorization is required to conduct marine mammal monitoring during survey activity. Monitoring shall be conducted in accordance with the following requirements:

(a) The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel.

(b) The operator shall work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals. Such equipment, at a minimum, shall include:

(i) PAM shall include a system that has been verified and tested by the acoustic PSO that will be using it during the trip for which monitoring is required.

(ii) At least one night-vision device suited for the marine environment for use during nighttime pre-clearance and ramp-up that features automatic brightness and gain control, bright light protection, infrared illumination, and/or optics suited for low-light situations (*e.g.,* Exelis PVS–7 night vision goggles; Night Optics D–300 night vision monocular; FLIR M324XP thermal imaging camera or equivalents).

(iii) Reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (*i.e.,* Fujinon or equivalent) (at least one per PSO, plus backups)

(iv) Global Positioning Units (GPS) (at least one per PSO, plus backups)

(v) Digital single-lens reflex cameras of appropriate quality that capture photographs and video (*i.e.,* Canon or equivalent) (at least one per PSO, plus backups)

(vi) Compasses (at least one per PSO, plus backups)

(vii) Radios for communication among vessel crew and PSOs (at least one per PSO, plus backups)

(viii) Any other tools necessary to adequately perform necessary PSO tasks.

(c) Protected Species Observers (PSOs, Visual and Acoustic) Qualifications

(i) PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider,

(ii) PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards), and

(iii) PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with

the vessel with which they will be working.

(iv) PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand.

(v) NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course.

(vi) NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved.

(vii) One visual PSO with experience as shown in 4(b) shall be designated as the lead for the entire protected species observation team. The lead shall coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the lead PSO shall devise the duty schedule such that experienced PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

(viii) PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

(ix). PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics.

(x) The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

(d) Data Collection

(i) PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances.

(ii) At a minimum, the following information must be recorded:

a. Vessel names (source vessel and other vessels associated with survey) and call signs;

b. PSO names and affiliations;

c. Dates of departures and returns to port with port name;

d. Date and participants of PSO briefings (as discussed in General Requirements. 2.)

e. Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;

f. Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;

g. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;

h. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;

i. Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.,* vessel traffic, equipment malfunctions);

j. Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.); and

(iii). Upon visual observation of any protected species, the following information shall be recorded:

a. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

b. PSO who sighted the animal;

c. Time of sighting;

d. Vessel location at time of sighting;

e. Water depth;

f. Direction of vessel's travel (compass direction);

g. Direction of animal's travel relative to the vessel;

h. Pace of the animal;

i. Estimated distance to the animal and its heading relative to vessel at initial sighting;

j. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;

k. Estimated number of animals (high/low/best);

l. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);

m. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

n. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);

o. Animal's closest point of approach (CPA) and/or closest distance from any element of the acoustic source;

p. Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other); and

q. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

(iv) If a marine mammal is detected while using the PAM system, the following information should be recorded:

a. An acoustic encounter identification number, and whether the detection was linked with a visual sighting;

b. Date and time when first and last heard;

c. Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal);

d. Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

6. Reporting

(a) L–DEO shall submit a draft comprehensive report to NMFS on all activities and monitoring results within

90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of protected species near the activities, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all protected species sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as described above in Data Collection and the IHA. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

(b) Reporting injured or dead protected species:

(i) In the event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by this IHA, such as serious injury or mortality, L–DEO shall immediately cease the specified activities and immediately report the incident to the NMFS Office of Protected Resources and the NMFS Pacific Islands Regional Stranding Coordinator. The report must include the following information:

a. Time, date, and location (latitude/longitude) of the incident;

b. Vessel's speed during and leading up to the incident;

c. Description of the incident;

d. Status of all sound source use in the 24 hours preceding the incident;

e. Water depth;

f. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

g. Description of all marine mammal observations in the 24 hours preceding the incident;

h. Species identification or description of the animal(s) involved;

i. Fate of the animal(s); and

j. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with L–DEO to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. L–DEO may not resume their activities until notified by NMFS.

(ii) In the event that L–DEO 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), L–DEO shall immediately report the incident to the NMFS Office of Protected Resources and the NMFS Pacific Islands Regional Stranding Coordinator. The report must include the same information identified in condition 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with L–DEO to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that L–DEO 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 specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), L–DEO shall report the incident to the NMFS Office of Protected Resources and the Pacific Islands Regional Stranding Coordinator within 24 hours of the discovery. L–DEO shall provide photographs or video footage or other documentation of the 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 L–DEO's proposed surveys. 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.

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: June 21, 2018.

Elaine T. Saiz,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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