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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 235

[FNS–2017–0039]

RIN 0584–AE60

Hiring Flexibility Under Professional Standards

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule adds four flexibilities to the hiring standards for new school nutrition program directors in small local educational agencies (LEAs) and new State directors of school nutrition programs under the Professional Standards regulations for the National School Lunch Program and School Breakfast Program. First, to address hiring challenges faced by small LEAs, which are those with 2,499 or fewer students, this rule requires relevant food service experience rather than school nutrition program experience for new school nutrition program directors. Second, it provides State agencies with discretion to consider documented volunteer or unpaid work as relevant experience for new school nutrition program directors in LEAs with 2,499 or fewer students. Third, it gives State agencies discretion to accept less than the required years of food service experience when an applicant for a new director position in an LEA with fewer than 500 students has the minimum required education. Lastly, this rule adds flexibility to the hiring standards for State directors of school nutrition programs by allowing State agencies to consider applicants with either a bachelor's or advanced degree in specified fields. These changes are expected to expand the pool of candidates qualified to serve as leaders in the school nutrition programs while continuing to ensure that school nutrition professionals are able to perform their duties effectively and efficiently.

DATES: This rule is effective April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Tina Namian, Chief, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, 12th Floor, Alexandria, Virginia 22302; 703–305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule provides flexibilities to the hiring standards for school nutrition program directors in small LEAs, which are those with 2,499 students or fewer and for State directors of school nutrition programs.

On July 1, 2015, USDA implemented professional standards for school nutrition personnel who manage and operate the National School Lunch Program (NSLP) and the School Breakfast Program (SBP), as required by the final rule *Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010* (80 FR 11077) and section 7(g) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1776(g)). The professional standards consist of hiring and continuing education/training requirements for new school nutrition program directors of school food authorities (SFAs), new State directors of school nutrition programs, and other staff noted in the regulation. Hiring and continuing education/training standards for school nutrition program directors and other SFA staff are established at 7 CFR 210.30. Hiring and continuing education/training standards for State directors of school nutrition programs and State directors of distributing agencies are established at 7 CFR 235.11(g).

The professional standards are intended to ensure that school nutrition professionals who manage and operate the NSLP and SBP have adequate knowledge and training to meet program requirements. Requiring set qualifications to operate the NSLP and SBP provides program operators with the knowledge and tools necessary to improve menu planning and service, reduce eligibility and counting errors, and enhance program integrity.

The hiring standards for school nutrition program directors are determined based on student enrollment at three LEA enrollment size levels: 2,499 students or fewer; 2,500–9,999 students; and 10,000 or more students. As discussed in the proposed rule *Hiring Flexibility Under Professional Standards* (83 FR 9447, March 6, 2018), since implementation of the professional standards in 2015, USDA has received multiple inquiries from State agencies on behalf of SFAs that are facing challenges with the hiring standards applicable to LEAs with 2,499 students or fewer. These challenges include limited labor markets and difficulty recruiting qualified candidates for new school nutrition program director positions. To assist the SFAs with these challenges and provide more local control over hiring decisions that reflect their unique labor markets, USDA proposed changes to the hiring standards at 7 CFR 210.30(b)(1)(i) for LEAs with 2,499 students or fewer. Public comments received in response to the proposed rule helped inform the development of this final rule.

For school nutrition program directors in LEAs with 2,499 students or fewer, this final rule:

- Removes the requirement of school nutrition program experience for new directors and instead requires relevant food service experience as the minimum standard to qualify new directors;
- At the discretion of the State agency, allows an SFA to hire a new director with documented volunteer or unpaid relevant food service experience on an individual basis; and
- Allows a State agency to approve an SFA to use the nonprofit school food service account to pay the salary of a school nutrition program director who does not meet the hiring standards so long as the SFA is complying with a State agency-approved plan to ensure the director will meet the professional standards requirements.

For LEAs with fewer than 500 students, this final rule provides State agencies the discretion to approve the hiring of a school nutrition program director who has less than the required years of food service experience, provided the applicant has the minimum education specified in the hiring standards for LEAs with 2,499 students or fewer.

For a new State director of school nutrition programs, the current

regulations at 7 CFR 235.11(g)(1)(i) require a bachelor's degree with an academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field. USDA proposed to allow an individual with a master's degree in one of those specified fields to be hired as a State director of school nutrition programs in recognition that many professionals change careers and gain experience through advanced education in areas relevant to school nutrition and to attract a larger number of professionals qualified to lead and manage the school nutrition programs statewide. This was intended to help ensure that individuals with relevant advanced degrees are not prevented from serving as State directors of school nutrition programs. Therefore, this final rule allows a State agency to hire as a State director of school nutrition programs an individual who has a master's or doctorate degree in one of the specified fields regardless as to the field of their bachelor's degree.

II. Overview of Public Comments and USDA Response

During the 60-day comment period (March 6, 2018–May 7, 2018), USDA received a total of 79 comments, including 3 non-germane comments and 2 duplicates. All comments, except the non-germane comments, are posted online at *www.regulations.gov* (see docket FNS–2017–0039, *Hiring Flexibility under Professional Standards*). These germane comments were submitted by State government personnel, State and national associations, school food service staff, school district personnel, food service management companies, and individuals. USDA appreciates the thoughtful comments submitted by stakeholders and the public.

In general, 36 comments favored the proposed rule in its entirety and 9 comments supported portions of the rule. Commenters in favor of the flexibilities agreed that small LEAs have a difficult time hiring qualified candidates and that the proposed flexibilities would help those struggling LEAs find a qualified director by allowing them to consider relevant food service experience if the applicants do not have specific school nutrition program experience. Three comments opposed the rule in its entirety, and four comments opposed portions of the proposed rule or the existence of Professional Standards for School Nutrition Professionals in general. Commenters opposed to the flexibilities noted that all school nutrition professionals must follow the same program requirements, regardless of the size of the LEA. Other comments were not clearly in favor of or opposed to the rule, expressed different views, or discussed other areas of school nutrition.

The following discussion includes public comments made in response to specific proposed provisions, as well as other suggestions made by commenters. The discussion does not include the public comments generally supportive of, or opposed to, the rule in its entirety.

Hiring Standards Flexibilities for School Nutrition Program Directors in LEAs With 2,499 Students or Fewer

In order to assist SFAs operating in LEAs with 2,499 students or fewer, the proposed rule included changes to the hiring standards for school nutrition program directors at § 210.30(b)(1)(i). The proposed changes included:

- Removing the requirement of school nutrition program experience for new school nutrition program directors and instead requiring relevant food service experience to meet the hiring standard;
- Providing State agencies with the discretion to approve the hiring of an applicant with volunteer or unpaid relevant food service experience on an individual basis; and
- For LEAs with fewer than 500 students, providing State agencies with the discretion to approve the hiring of a school food service director who has less than the required years of relevant food service experience, provided that the applicant has the minimum education to satisfy the hiring standards for LEAs with 2,499 students or fewer.

Proposed Flexibility: Allowing Relevant Food Service Experience in Addition to School Nutrition Program Experience

In recognition of the difficulties that LEAs with 2,499 students or fewer face when seeking to recruit candidates for school nutrition program director, USDA proposed to provide flexibility in § 210.30(b)(1)(i) with regard to the hiring standards for school nutrition program directors to allow for the consideration of relevant food service experience gained inside or outside of school nutrition program operations.

Comments

Six commenters specifically voiced their support for the flexibility to allow food service experience that was not school nutrition program-specific in order to expand the pool of qualified applicants for the position of school nutrition program director in LEAs with 2,499 students or fewer. These commenters included four State agencies, one school food service staff member, and one food service management company. These commenters cited difficulties recruiting to small LEAs individuals who have experience specific to school food service while also pointing out that general food service experience adds value to school food service operations.

Four commenters opposed this flexibility. These commenters included one professional organization, two school food service staff members, and one individual member of the public. These commenters voiced concern that allowing general food service experience to substitute for school nutrition program experience would diminish the standards for school food service in these LEAs.

USDA Response

USDA appreciates the comments received on this flexibility. USDA agrees that candidates with school nutrition program experience are best prepared for the school nutrition program director position. These individuals are more likely to be informed of the most current school nutrition practices and regulations and are therefore preferred. However, applicants with experience managing food service operations at a healthcare facility, restaurant, civic/community organization, or other type of establishment have demonstrated transferable skills in food service that could be applied in a school food service setting. Examples of such skills include food handling and preparation, financial management, and customer service. By meeting the requisite number of years of relevant food service experience cited in § 210.30(b)(1)(i)(B), (C), and (D), individuals will have sufficient food service experience to responsibly perform the duties required of school nutrition program directors in these LEAs with proportionate levels of responsibility and complexity.

Program directors are still required to complete annual continuing education/training. Additionally, USDA encourages new school nutrition program directors hired with food service experience that is not specific to school nutrition settings to complete additional school nutrition training or work toward a State-recognized certificate for school nutrition directors. Several entities, such as the Institute for Child Nutrition, offer no-cost or low-cost continuing education/training in a variety of formats, and such training is an allowable use of the nonprofit school food service account.

While we encourage hiring school food service directors who have previous school nutrition experience,

USDA is aware of the difficulties LEAs with 2,499 students or fewer face when recruiting for such positions and wants to provide flexibility to LEAs in meeting their hiring needs. Flexibility to allow relevant food service experience to qualify applicants under the hiring standards for LEAs with 2,499 students or fewer expands the pool of applicants for those LEAs in communities that may have recruitment difficulties. Accordingly, this final rule amends § 210.30(b)(1)(i)(B), (C), and (D) to allow for the consideration of relevant food service experience generally rather than specific school nutrition program experience.

Proposed Flexibility: State Agency Discretion To Consider Volunteer or Unpaid Work Experience

USDA proposed to provide flexibility in § 210.30(b)(1)(i)(B), (C), and (D) by giving State agencies the discretion to allow LEAs with 2,499 students or fewer to hire school nutrition program directors who have relevant food service experience whether that experience was in a paid or unpaid/volunteer food service position. The State agency would use this discretion on an individual, case-by-case basis. For example, an applicant with paid and/or unpaid experience managing food service operations at a healthcare facility, restaurant, civic/community organization, or other type of establishment could be considered for a director's position, provided that that applicant also has the required education.

Comments

Five commenters supported accepting unpaid or volunteer experience toward meeting the food service experience standard. Those five commenters were comprised of three State agencies, one food service management company, and one individual.

Four commenters—one State agency, one professional organization and two individuals—opposed the proposed flexibility. Some of these commenters stated that unpaid or volunteer experience would weaken standards when such experience is not substantive and does not equip candidates with the necessary skills and background in school nutrition programs. One commenter suggested requiring verifiable written documentation of the unpaid or volunteer experience.

USDA Response

USDA affirms the discretion of State agencies to allow LEAs with 2,499 students or fewer to hire school nutrition program directors with unpaid food service experience on an individual basis, as specified by the State agency. The flexibility to consider unpaid experience acknowledges that in smaller communities there may be fewer employment opportunities in food service, but residents may be able to volunteer to manage food service activities for civic and community organizations. An applicant for a school nutrition program director position may also have relevant experience in an unpaid apprenticeship or internship.

A State agency has the discretion to establish a process to use this flexibility. The existing requirements for experience in § 210.30(b)(1)(i)(B), (C), and (D) are between one and three years of relevant food service experience, depending on the level of education obtained by the applicant. Given the parameters of this flexibility, as well as the necessity of having such a flexibility available in certain cases, this provision is finalized in this rule. However, this final rule requires that unpaid or volunteer work, when used to qualify an individual to be a school nutrition program director, must be documented to verify that the unpaid work is relevant and actually occurred. For example, documentation of volunteer work in a school cafeteria could include a letter from the school nutrition program director stating the amount of time the individual worked, the substantive work they performed, and the skills they learned. Accordingly, this final rule amends § 210.30(b)(1)(i)(B), (C), and (D) to allow State agency discretion to consider relevant food service experience for school nutrition program directors to include documented unpaid or volunteer work. This discretion shall be applied on an individual basis.

Other Comment: Use of the Nonprofit School Food Service Account To Pay Salaries

The regulations in § 210.30(b)(1)(i) provide that new school nutrition program directors in LEAs with an enrollment of 2,499 students or fewer must meet specific hiring standards. These hiring standards include minimum educational requirements that may be combined with relevant work experience, depending on the educational degree held. Pursuant to §§ 210.2, 210.14(a), 210.18(h), 210.18(l), 210.19(a), and 210.21(a), if a director does not meet the hiring standards, an SFA cannot use the nonprofit school food service account to pay the director's salary.

Comments

Two commenters suggested that SFAs be permitted to use the nonprofit school food service account to pay the salary of a director who does not meet the hiring requirements, provided that the SFA is implementing a Corrective Action Plan to meet the professional standards requirements.

USDA Response

USDA agrees with these commenters and recognizes the difficulties some LEAs with 2,499 students or fewer experience when hiring new school nutrition program directors. Generally, if a school nutrition program director does not meet the hiring standards, failure to meet the standards would be considered a finding for purposes of the Administrative Review. In this instance, the State agency could take fiscal action by requiring the SFA to repay with non-Federal funds any of the director's salary paid from the nonprofit school food service account, and disallow further payment to the director with Federal funds, including the nonprofit school food service account. Requirements should be reasonable and achievable, and the fiscal impact of not being able to use the nonprofit school food service account to pay the salary of a school nutrition program director could jeopardize an SFA's financial viability and ability to participate in the NSLP and SBP. Therefore, for LEAs with a student enrollment of 2,499 or fewer, this final rule provides that a State agency may approve an SFA to use the nonprofit school food service account to pay the salary of a school nutrition program director who does not meet the hiring standards so long as the SFA is complying with a State agency-approved plan to ensure the director will meet the professional standards requirements in § 210.30.

The plan must include reasonable timeframes for the SFA to achieve and maintain compliance and ensure the director will meet the qualifications, whether by gaining experience or completing educational requirements. The plan may also include required training and/or educational courses. LEAs with student enrollment of 2,499 or fewer have faced challenges in hiring directors who meet the required qualifications, and this flexibility will help to address the needs of their unique labor markets while ensuring standards are still met. Accordingly, this final rule amends § 210.30(b)(1)(i) to allow a State agency to approve an SFA to use the nonprofit school food service account to pay the salary of a school nutrition program director who does not

meet the hiring standards so long as the SFA is complying with a State agency-approved plan to ensure the director will meet the professional standards requirements.

Other Comment: Higher Educational Degrees

Comment

A commenter suggested USDA expand to school nutrition program directors the proposed flexibility for State directors of school nutrition programs to allow a master's degree in a specified field with a bachelor's degree in any field.

USDA Response

The regulation at § 210.30(b)(1) does not currently allow a master's or doctorate degree in a specified field to supplement a bachelor's degree in any field for school nutrition program directors. USDA recognizes the value of an advanced degree in a specified field, and encourages school nutrition professionals to continue to learn and expand their knowledge in the field. However, the flexibility suggested by the commenter falls outside the scope of the proposed rule and has not been included in this final rule. USDA may consider this suggestion in a future rulemaking regarding professional standards.

Other Comment: Scope of the Flexibilities

Comments

Six commenters suggested expanding the scope of the flexibilities beyond those included in the proposed rule. Two State agencies requested the school nutrition director flexibilities for LEAs with fewer than 500 students be expanded to LEAs with an enrollment of 1,000 students. Another State agency requested the flexibilities be applied to all LEAs located in rural settings, regardless of enrollment size. One State association requested the proposed flexibilities be applied to schools of all enrollment categories. An individual requested that LEAs with fewer than 500 students be exempt from the standards entirely, while another individual wanted to expand the enrollment categories from below 2,500 students to 3,500 students.

USDA Response

USDA does not support expanding the scope of the flexibilities to include LEAs of larger sizes in § 210.30(b)(1)(ii) and (iii). Such an action would be inconsistent with the intent of the proposed rule, which addressed hiring challenges at LEAs with enrollments of 2,499 students or fewer. We note that as LEA size increases, the level of responsibility and complexity also increases, which necessitates higher standards. However, we also note the existing Professional Standards regulation includes several different pathways for candidates to meet the educational and experience requirements for all LEA enrollment size categories. In addition, we do not agree with eliminating the professional standards for schools with fewer than 500 students or expanding the flexibilities for all rural schools. However, we expect that the flexibilities outlined in this final rule will address the specific challenges of such schools because these flexibilities will likely expand the pool of qualified candidates.

Other Comment: School Consolidations

Comment

A professional organization provided a comment discussing unique challenges facing small school districts in the process of consolidation with other school districts. The organization noted consolidation could increase the level of student enrollment of an LEA. In that case, the hiring standards for the SFA director could shift into a larger LEA enrollment category under the Professional Standards regulation in § 210.30(b)(1). The organization requested that USDA allow State agencies to work with consolidating school districts and provide a transition period for the affected school nutrition professionals to work towards the professional standards requirements at the school district's new enrollment size category.

USDA Response

Although USDA recognizes the potential challenges for an SFA making decisions regarding staff when school districts combine, this final rule will not provide the transition period requested by the commenter. It is notable that we did not receive any comments on this issue from State agencies, which would be most affected if USDA were to establish a process for transition during a school district consolidation. Additionally, many factors are involved in staffing decisions when school districts combine. Therefore, instead of developing a regulatory process, USDA will work with the State agency, on an individual basis, when a school district consolidation shifts an SFA into a larger enrollment size category for hiring under Professional Standards in § 210.30(b)(1).

Other Comments: Combinations of Experience, Training, and Education

Comments

Nine commenters who identified themselves as school nutrition professionals suggested allowing school nutrition experience to substitute for education. Three of these commenters specifically recommended 10 years of school nutrition experience be allowed to substitute for a bachelor's degree. Two of the nine commenters noted the importance of balancing the education and experience requirements so applicants with a weakness in one area can compensate with strengths in another.

USDA Response

While USDA understands school nutrition experience is valuable in operating school nutrition programs, this final rule does not allow such experience to substitute for education in § 210.30(b)(1). One of the purposes of this rule is to provide flexibility for the type of experience required for new school nutrition program directors in small LEAs, and it is outside the scope of the rule to allow experience to substitute for education. USDA appreciates the various strengths and experiences that school nutrition program directors bring to the programs they administer but is not expanding the flexibilities to substitute experience for education in this final rule. Educational requirements bolster the credentials of school nutrition program directors and enhance their practical experience with formal academic instruction. However, this rule does not change the current regulation at § 210.30(b)(1) that allows school nutrition program directors hired before July 1, 2015 to remain in their positions or to transfer to other positions in LEAs of the same or smaller enrollment category.

Comment

One commenter suggested granting flexibility to allow a State-recognized certificate to substitute for education for a school nutrition program director in an LEA of any size.

USDA Response

USDA will continue to encourage school nutrition professionals to learn and expand their knowledge and skills in the field. USDA recognizes the value of a State-recognized certificate in school nutrition programs as a means to advance the profession. However, the flexibility suggested by the commenter falls outside the scope of the proposed rule and has not been included in this final rule.

Other Comment: Waivers of the General Professional Standards

Comment

One State agency indicated it would like the ability for State agencies to grant waivers to these regulatory requirements on a case-by-case basis for applicants who do not meet the minimum hiring criteria.

USDA Response

USDA will not establish through this final rule a separate waiver process for these provisions since there is a general waiver process in place, as prescribed in Section 12(l) of the Richard B. Russell National School Lunch Act, as amended. Under the general waiver process, USDA must determine that a waiver facilitates the State's (or other service provider's) ability to carry out the purpose of the affected program; the entity requesting the waiver must provide notice and information to the public regarding the proposed waiver; and the entity requesting the waiver must demonstrate that the waiver will not increase the overall cost to the Federal Government, or that any additional cost will be paid from non-Federal funds. USDA then periodically reviews the performance of any State or other service provider granted a waiver. This waiver process may be used when seeking waivers from the hiring requirements for a new school nutrition program director, as well as a new State director of school nutrition programs.

Proposed Flexibility: Years of Experience for School Nutrition Program Directors in LEAs With Fewer Than 500 Students

To provide additional assistance to LEAs with fewer than 500 students, USDA proposed to modify the current optional flexibility at § 210.30(b)(1)(i)(D), which provides State agencies discretion to allow an SFA to hire a new school nutrition program director with a high school diploma or equivalent, and less than the required years of relevant school nutrition program experience. The proposed rule would allow the State agency to approve the hiring of an applicant who has at least a high school diploma or equivalent, but less than the required years of relevant food service experience.

Comments

Ten commenters expressed support for the proposed flexibility. These comments were received from four State agencies, five schools or school food service staff, and one food service management company. One commenter from a professional organization opposed the proposed change, stating it would weaken the overall hiring standards. One commenter from a State agency stated this proposed change should only be acceptable if the new director had a minimum of one year experience in addition to the minimum required education.

USDA Response

By expanding the existing optional flexibility at § 210.30(b)(1)(i)(D) to include other, higher educational levels, USDA affirms its commitment to providing LEAs with fewer than 500 students more local control to address their unique hiring challenges. A new director with a high school diploma or equivalent is currently required to have at least three years of experience, while a new director with an associate's degree or a bachelor's degree in any major must have at least one year of experience. Therefore, expanding the existing flexibility to allow an LEA with fewer than 500 students to hire an individual with an academic degree higher than a high school diploma, but less than the required years of experience, would pose little risk to the food service program operation because fewer years of experience is otherwise allowed for an individual with a high school diploma or equivalent. Further, allowing an LEA with fewer than 500 students to hire an individual with the required academic credentials but less experience would expand the pool of potentially suitable candidates and ensure the standards are both reasonable and achievable for these LEAs. Accordingly, this final rule will revise § 210.30(b)(1)(i)(D) and add § 210.30(b)(1)(i)(E) to provide State agencies discretion to allow an LEA with fewer than 500 students to hire a new school nutrition program director with a high school diploma or equivalency, an associate's degree, or a bachelor's degree, but less than the required years of relevant food service experience.

Proposed Flexibility: Academic Requirements for State Directors of School Nutrition Programs

For a new State director of school nutrition programs, the current regulations at § 235.11(g)(1)(i) require a bachelor's degree with an academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field. Pursuant to § 235.11(g)(1)(i)(iv)(A), a master's degree in one of the specified fields is strongly preferred. To encourage individuals with a master's degree in one of the specified fields but a bachelor's degree in a non-related field to apply, USDA proposed to add the option for a master's degree in a specified field to the basic qualifications listed in § 235.11(g)(1)(i). However, to emphasize the importance of a foundational background in the specified fields, USDA also proposed to support a preference for both a bachelor's and a master's degree in the specified fields at § 235.11(g)(1)(i)(iv)(A).

Comments

Seven commenters expressed support for the option to allow a master's degree in one of the specified fields when hiring a State director. Comments received in support of this flexibility were from four State agencies, two professional organizations, and one individual.

USDA did not receive any comments in opposition to this flexibility. However, several commenters had additional suggestions. One commenter from a State agency suggested requiring that State directors have a master's degree, which is not currently a requirement. A commenter from another State agency suggested allowing the hiring of a State director with a bachelor's degree in any field if the candidate has program and management experience. A trade association suggested allowing varying combinations of educational degrees and years of experience, such as a bachelor's degree in any field and four years of experience managing Federal child nutrition programs at a State agency level; or a bachelor's degree in any field, four years of general program management experience, and a State-recognized certificate for school nutrition directors.

USDA Response

To expand opportunities for highly educated individuals to serve as State directors of school nutrition programs, this final rule will allow a State agency to hire a candidate with a master's or doctorate degree in one of the specified fields in § 235.11(g)(1)(i) regardless as to the field of their bachelor's degree. Adding a master's or doctorate degree in one of the specified fields to the basic qualifications acknowledges that many professionals change careers and gain experience through advanced education in areas relevant to school nutrition. It was not our intent to deny highly educated individuals the ability to qualify for these positions. In addition, it was not our intent to exclude a type of advanced degree in the specified fields; therefore, we also add a doctorate

degree to the qualifications. For example, a State agency supervisor who has a bachelor's degree in political science and a doctorate degree in nutrition, who also meets the other qualifications, would have a strong general education plus advanced education in one of the specified areas. This final rule also affirms a preference for both a bachelor's degree and a master's degree, or bachelor's and doctorate, in the specified fields.

While we appreciate the additional suggestions for flexibility, USDA will maintain a hiring standard for State directors of school nutrition programs that is similar in structure to the existing regulations. The existing combination of specific education and experience is straightforward as far as facilitating implementation and is sufficiently rigorous in recognition of the position's significance to school nutrition programs in the States. Accordingly, this final rule amends § 235.11(g)(1)(i) to allow a master's or doctorate degree in specified fields. Additionally, this final rule amends § 235.11(g)(1)(iv)(A) to support a preference for both a bachelor's and a master's or doctorate degree in the specified fields.

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be not significant and was therefore not reviewed further by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. This rule would not have an adverse impact on small entities in the National School Lunch Program and School Breakfast Program, rather, it will ease program operations by adding flexibility in the hiring standards for new directors in LEAs with 2,499 students or fewer and new directors of State agencies.

Impact: The provisions of this rule apply to LEAs with 2,499 students or fewer, and to State agencies operating the National School Lunch Program and School Breakfast Program. These entities meet the definitions of ''small governmental jurisdiction'' and ''small entity'' in the Regulatory Flexibility Act. These entities would be able to quickly benefit from the hiring flexibilities in this rule.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation, control regulatory costs, and provide that the cost of planned regulations be prudently managed and controlled through a budgeting process.

This final rule is an E.O. 13771 deregulatory action that eases the professional standards regulations for State directors of school nutrition programs and for school nutrition program directors in LEAs with 2,499 students or fewer, which are often found in rural communities facing labor market challenges. This rule addresses hiring challenges, such as recruitment of qualified candidates, identified by the State agencies that administer the Child Nutrition Programs. It adds flexibility to hiring standards by expanding the range of allowable education for new State directors, and the range of allowable work experience for new local directors in small LEAs.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program and School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Number 10.555 and Number 10.553, respectively, and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.) Since the Child Nutrition Programs are State-administered, USDA's Food and Nutrition Service (FNS) Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operation. Discussions also take place in response to technical assistance requests submitted by the State agencies to the FNS Regional Offices. This regular interaction with State and local operators provides USDA with valuable input that informs rulemaking. Based on the inquiries and waiver requests from the State agencies disclosing challenges with the professional standards regulations, USDA is providing specific flexibilities to address the requirement issues in a manner that promotes program efficiency and effectiveness.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

USDA has reviewed this final rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on Program participants on the basis of age, race, color, national origin, sex, or disability. After a careful review of the rule's intent and provisions, USDA has determined that this rule is not expected to affect the participation of protected individuals in the National School Lunch Program and School Breakfast Program, or limit the ability of protected classes of individuals to serve as new directors in LEAs and State agencies. The provisions of this rule add flexibility to the existing hiring standards for new directors in order to address difficulties faced by program operators in finding qualified applicants.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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. USDA notified Tribal leaders about the proposed rule to encourage public comments, and briefed Tribal leaders at the conference call scheduled by the FNS Office of Tribal Relations on March 14, 2018. USDA will also notify Tribal leaders about this final rule, and intends to brief Tribal leaders at one of the periodic consultations or conference calls scheduled by the FNS Office of Tribal Relations.

USDA has assessed the impact of this final rule on Indian tribes and determined that this rule does not, to our knowledge, have negative Tribal implications that require Tribal consultation under E.O. 13175. We are unaware of any current Tribal laws that could be in conflict with the provisions of this rule and anticipate that the hiring flexibilities will benefit Tribal schools.

The flexibilities provided by this rule are expected to increase the pool of candidates qualified to serve as new directors of school nutrition programs in small LEAs. This is expected to benefit Tribal communities, which often experience difficulty attracting qualified school nutrition personnel.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency 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.

This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promoting 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.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grant programs—health, Grant programs—education, School breakfast and lunch programs, Nutrition, Reporting and recordkeeping requirements.

7 CFR Part 235

Administrative practice and procedure, Food assistance programs, Grant programs—health, Grant programs—education, School breakfast and lunch programs, Nutrition, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 210 and 235 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. Amend § 210.30 by:
■ a. Revising paragraph (b)(1)(i) and;
■ b. Revising the table in paragraph (b)(2).

The revisions read as follows:

§ 210.30 School nutrition program professional standards.

* * * * *

(b) * * *

(1) * * *

(i) *School nutrition program directors with local educational agency enrollment of 2,499 students or fewer.* Directors must meet the requirements in paragraph (b)(1)(i)(A), (B), (C), or (D) of this section. However, a State agency may approve a school food authority to use the nonprofit school food service account to pay the salary of a school nutrition program director who does not meet the hiring standards herein so long as the school food authority is complying with a State agency-approved plan to ensure the director will meet the requirements.

(A) A bachelor's degree, or equivalent educational experience, with an academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(B) A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* either a State-recognized certificate for school nutrition directors, or at least one year of relevant food service experience. At the discretion of the State agency, and on an individual basis, documented relevant food service experience may be unpaid;

(C) An associate's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field *and* at least one year of relevant food service experience. At the discretion of the State agency, and on an individual basis, documented relevant food service experience may be unpaid; or

(D) A high school diploma or equivalency (such as the general educational development diploma), *and* at least three years of relevant food service experience. At the discretion of the State agency, and on an individual

basis, documented relevant food service experience may be unpaid. Directors hired under this criterion are strongly encouraged to work toward attaining an associate's degree in an academic major in at least one of the fields listed in paragraph (b)(1)(i)(C).

(E) For a local educational agency with less than 500 students, the State agency may approve the hire of a director who meets one of the educational criteria in paragraphs (b)(1)(i)(B) through (D) but has less than the required years of relevant food service experience.

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SUMMARY OF SCHOOL NUTRITION PROGRAM DIRECTOR PROFESSIONAL STANDARDS BY LOCAL EDUCATIONAL AGENCY SIZE

Minimum requirements for directors	Student enrollment 2,499 or less	Student enrollment 2,500–9,999	Student enrollment 10,000 or more
Minimum Education Standards (required) *(new directors only)*.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field OR Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* either a State-recognized certificate for school nutrition directors or at least 1 year of relevant food service experience; OR Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; *and* at least 1 year of relevant school nutrition program experience; OR High school diploma (or GED) *and* 3 years of relevant food service experience.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; OR Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate for school nutrition directors; OR Bachelor's degree in any academic major *and* at least 2 years of relevant school nutrition program experience. OR Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; *and* at least 2 years of relevant school nutrition program experience.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; OR Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate for school nutrition directors; OR Bachelor's degree in any major *and* at least 5 years of experience in management of school nutrition programs.
Minimum Education Standards (preferred) *(new directors only)*.	Directors hired without an associate's degree are strongly encouraged to work toward attaining associate's degree upon hiring.	Directors hired without a bachelor's degree strongly encouraged to work toward attaining bachelor's degree upon hiring.	Master's degree, or willingness to work toward master's degree, preferred.
			At least 1 year of management experience, preferably in school nutrition, strongly recommended. At least 3 credit hours at the university level in food service management plus at least 3 credit hours in nutritional sciences at time of hiring strongly preferred.
Minimum Prior Training Standards (required) *(new directors only)*.	At least 8 hours of food safety training is required either not more than 5 years prior to their starting date or completed within 30 calendar days of employee's starting date.		

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PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

■ 3. The authority citation for part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

§ 235.11 [Amended]

■ 4. Amend § 235.11 as follows:

■ a. In paragraph (g)(1)(i) after the words ''Bachelor's degree'', add the words '', master's degree, or doctorate degree''; and

■ b. In paragraph (g)(1)(iv)(A), remove the words ''Master's degree'' and add in their place the words, ''Both a bachelor's degree *and* a master's or doctorate degree''.

Dated: February 21, 2019.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2019–03524 Filed 2–28–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1145

[Doc. No. AMS–DA–18–0097]

Reauthorization of Dairy Forward Pricing Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reauthorizes the Dairy Forward Pricing Program (DFPP) in accordance with the Agriculture Improvement Act of 2018 (2018 Farm Bill). Establishing new contracts under the DFPP has been prohibited since the expiration of the program on September 30, 2018. The 2018 Farm Bill reauthorized the program to allow handlers to enter into new contracts until September 30, 2023. Any forward contract entered prior to the September 30, 2023, deadline is subject to a September 30, 2026, expiration date.

DATES: *Effective Date:* March 4, 2019.

FOR FURTHER INFORMATION CONTACT: Roger Cryan, Director, Economics Division, USDA/AMS/Dairy Programs, Stop 0229—Room 2753–S, 1400 Independence Avenue SW, Washington, DC 20250–0231; telephone: (202) 720–7091; or, email: *roger.cryan@usda.gov.*

SUPPLEMENTARY INFORMATION: The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) [1] initially established the DFPP.[2] The DFPP allows milk handlers, under the Agricultural Marketing Agreement Act of 1937, (AMAA) [3] to pay producers or cooperative associations of producers a negotiated price for producer milk, rather than the Federal order minimum blend price for non-fluid classes of milk (Classes II, III, and IV under the Federal Milk Marketing Order (FMMO) system). The DFPP does not allow for forward contracting of fluid or Class I milk.

Following the initial expiration of the DFPP which prevented the establishment of new contracts after September 30, 2012, the ''American Taxpayer Relief Act of 2012,'' (ATRA) [4] revised the program to allow handlers to enter into new contracts until September 30, 2013. The ''Agricultural Act of 2014'' (2014 Farm Bill) [5] then extended the program to allow new contracts until September 30, 2018. Establishing new contracts under the DFPP has been prohibited since the expiration of the program on September 30, 2018. Any forward contract established prior to the September 30, 2018, deadline is subject to a September 30, 2021, expiration date.

Participation in the DFPP is voluntary for dairy farmers, dairy farmer cooperatives, and handlers. Handlers may not require producer participation in a forward pricing program as a condition for accepting milk. USDA, including Market Administrator personnel, does not determine the terms of forward contracts or enforce negotiated prices. This regulation also does not affect contractual arrangements between a cooperative association and its members.

Under the DFPP, regulated handlers must still account to the FMMO pool for the classified use value of their milk. Regulated handlers claiming exemption from the Federal order minimum pricing provisions must submit to the Market Administrator a copy of each forward contract. The contract must contain a disclosure statement—either as part of the contract itself or as a supplement—to ensure producers understand the nature of the program as well as the basis on which they will be paid for their milk. Contracts that do not contain a disclosure statement are deemed invalid and returned to the handler. For the first month the program is effective, contracts must be signed on or after the day the program becomes effective, and the contract must be received by the Market Administrator by the 15th day of that month. For example, if the program becomes effective on February 15, contracts for March milk must be signed between February 15 and February 28, and copies must be received by the Market Administrator by March 15.

Handlers with forward contracts remain subject to all other milk marketing order provisions. Payments specified under a forward contract must be made on or before the same date as the federal order payments they replace. Required payment dates are specified in § 1145.2(e) of the regulations.

This final rule reauthorizes producers and cooperative associations of producers to enter into forward price contracts under the DFPP through September 30, 2023. All terms of the new forward contracts must expire prior to September 30, 2026. All other provisions and requirements of the program as provided for in the final rule [6] published October 31, 2008, are still in effect. This document also provides notice that reauthorization of the DFPP applies to the milk regulated by the recently established California FMMO in addition to the other ten FMMOs.[7]

Executive Orders 12866 and 13771

This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). In addition, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. *See* OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The adopted amendments do not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities.

For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

Based on AMS data, the milk of 33,481 dairy farmers was pooled on the Federal milk marketing order system. Of the total, 32,958 dairy farmers, or 98 percent, were considered small businesses. During the same month, 301 handler plants were regulated by or reported their milk receipts to be pooled

[1] Public Law 110–234.

[2] 73 FR 64868.

[3] 7 U.S.C. 601–614.

[4] Public Law 112–240.

[5] Public Law 113–79.

[6] 73 FR 64868.

[7] See addition of 7 CFR 1051.73 in § 1145.2(a).

and priced on a Federal milk marketing order. Of the total, approximately 163 handler plants, or 54 percent, were considered small businesses.

Producer and handlers use the DFPP as a risk management tool. Under the DFPP, producers and handlers can ''lock-in'' prices, thereby minimizing risks associated with price volatility that are particularly difficult for small businesses to mitigate. Therefore, reauthorization of this program will not have a significant economic impact on a substantial number of small entities.

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

Section 1601(c)(2)(B) of the 2014 Farm Bill provides that the administration of the DFPP shall be made without regard to the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. Section 1701 of the 2018 Farm Bill [8] extends that Congressional direction to the current reauthorization of the DFPP. Thus, any information collection conducted for the DFPP is not subject to the PRA.

Final Action

In accordance with the 2018 Farm Bill, this final rule extends the DFPP to all Federal milk marketing orders. New contracts under the Program may be entered into until September 30, 2023. Any forward contract entered into up to and until the September 30, 2023, deadline is subject to a September 30, 2026, expiration date.

Section 1601(c)(2)(A) of the 2014 Farm Bill provides that the promulgation of the regulations to implement the reauthorization of the DFPP shall be made without regard to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553. Section 1701 of the 2018 Farm Bill extends that Congressional direction to the current reauthorization of the DFPP. AMS, therefore, is issuing this final rule without prior notice or public comment.

Additionally, this final rule will be effective on March 4, 2019. As explained above, the DFPP is a voluntary program and AMS will not take action until forward contracts are received from handlers who are choosing to participate in this program. By making this rule effective one day after publication in the **Federal Register**, handlers will have the maximum amount of time to begin the contracting process with producers. Thus, it is unnecessary and contrary to the public interest to delay the effective date of the final rule further.

[8] Public Law 115–334.

List of Subjects in 7 CFR Part 1145

Contract, Forward contract, Forward pricing, Milk.

For the reasons set forth in the preamble, title 7, chapter X, part 1145, of the Code of Federal Regulations is amended as follows:

PART 1145—DAIRY FORWARD PRICING PROGRAM

■ 1. The authority citation for 7 CFR part 1145 continues to read as follows: 7 U.S.C. 8772.

■ 2. Amend § 1145.2 by revising paragraphs (a) and (b) to read as follows:

§ 1145.2 Program.

(a) Any handler defined in 7 CFR 1000.9 may enter into forward contracts with producers or cooperative associations of producers for the handler's eligible volume of milk. Milk under forward contract in compliance with the provisions of this part will be exempt from the minimum payment provisions that would apply to such milk pursuant to 7 CFR 1001.73, 1005.73, 1006.73, 1007.73, 1030.73, 1032.73, 1033.73, 1051.73, 1124.73, 1126.73 and 1131.73 for the period of time covered by the contract.

(b) No forward price contract may be entered into under the program after September 30, 2023, and no forward contract entered into under the program may extend beyond September 30, 2026.

* * * * *

Dated: February 25, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–03600 Filed 2–28–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0949; Product Identifier 2018–NE–20–AD; Amendment 39–19484; AD 2018–22–11]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Safran Helicopter Engines, S.A. (Safran Helicopter Engines), ASTAZOU XIV B and H model engines with certain 3rd-stage turbine wheels installed. This AD requires initial and repetitive inspections of the 3rd-stage turbine wheels. This AD was prompted by a report that six 3rd-stage turbine wheels were returned to service after a repair that could result in exceedance of the allowable vibration threshold during operation. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 18, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 18, 2019.

We must receive comments on this AD by April 15, 2019.

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

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

For Safran Helicopter Engines service information identified in this final rule, contact Safran Helicopter Engines, S.A., 40220 Tarnos, France; phone: +33 5 59 74 45 15; internet address: *https://www.safran-helicopter-engines.com/services/technical-assistance.* You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0949.

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–2018–0949; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7146; fax: 781–238–7199; email: *barbara.caufield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0085, dated April 13, 2018 (referred to after this as ''the MCAI''), to address an unsafe condition for the specified products. The MCAI states:

Safran Helicopter Engines reported that an identified batch of stage 3 turbine wheels were released to service after repair in spite of the fact that the natural frequency of the turbine blades installed on those wheels did not comply with the acceptance criteria. Excessive turbine blade vibration may lead to progressive crack initiation on the rear face of the affected turbine wheel.

This condition, if not detected and corrected, could lead to rupture of a turbine blade and its associated piece of rim, possibly resulting in an un-commanded engine in-flight shut-down and/or release of high energy debris, with consequent damage to, and/or reduced control of, the helicopter.

To address this potentially unsafe condition, Safran Helicopter Engines issued the MSB to provide inspections instructions.

For the reasons described above, this AD requires repetitive inspections of the affected parts and, depending on findings, accomplishment of applicable corrective action(s).

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0949.

Related Service Information Under 1 CFR Part 51

We reviewed Safran Helicopter Engines Mandatory Service Bulletin (MSB) 283 72 0813, Version A, dated February 26, 2018. The MSB describes procedures for inspecting the rear face of the 3rd-stage turbine wheel. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

AD Requirements

This AD requires initial and repetitive inspections of 3rd-stage turbine wheels.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0949 and Product Identifier 2018–NE–20–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Costs of Compliance

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

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the 3rd-stage turbine wheel	5 work-hours × $85 per hour = $425	$0	$425	$0

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the 3rd-stage turbine wheel	8 work-hours × $85 per hour = $680	$217,131	$217,811

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–22–11 Safran Helicopter Engines (Type Certificate previously held by Turbomeca, S.A.): Amendment 39–19484; Docket No. FAA–2018–0949; Product Identifier 2018–NE–20–AD.

(a) Effective Date

This AD is effective March 18, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Safran Helicopter Engines, S.A. (Safran Helicopter Engines), ASTAZOU XIV B and H model engines with the 3rd-stage turbine wheels specified in Figure 1 to paragraph (c) of this AD installed.

FIGURE 1 TO PARAGRAPH (c) OF THIS AD—3RD-STAGE TURBINE WHEELS

Part Nos.	Serial Nos.
0 265 25 706 0	AD78691AD, AD78703AD, AD93845AD, CC52860, RD39596
0 265 25 705 0	L232AD

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that six 3rd-stage turbine wheels were returned to service after a repair that could result in exceedance of the allowable vibration threshold during operation. We are issuing this AD to prevent failure of the 3rd-stage turbine wheel. The unsafe condition, if not addressed, could result in loss of engine power and reduced control of the helicopter.

(f) Compliance

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

(g) Required Action

(1) Perform an inspection of the 3rd-stage turbine wheel as follows:

(i) Before exceeding 400 engine cycles since the last engine overhaul, or within 50 engine start stop cycles after the effective date of this AD, whichever occurs later, inspect the rear face of each affected 3rd-stage turbine wheel in accordance with the Accomplishment Instructions, paragraphs 2.4.2 and 2.4.3, in Safran Helicopter Engines Mandatory Service Bulletin (MSB) 283 72 0813, Version A, dated February 26, 2018.

(ii) After that, repeat the inspection required by paragraph (g)(1)(i) of this AD at intervals not to exceed 400 engine cycles since the last inspection.

(iii) A one-time, non-cumulative tolerance of 50 engine cycles may be applied to the repetitive inspection interval required by paragraph (g)(1)(ii) of this AD.

(2) If a crack indication is found during any inspection required by paragraph (g)(1) of this AD, remove the engine from service and repair the 3rd-stage turbine wheel in accordance with the Accomplishment Instructions, paragraph 4.3, in Safran Helicopter Engines MSB 283 72 0813, Version A, dated February 26, 2018.

(h) Terminating Action

A repair of the 3rd-stage turbine wheel in accordance with the Accomplishment Instructions, paragraph 4.3, in Safran Helicopter Engines MSB 283 72 0813, Version A, dated February 26, 2018, constitutes terminating action for the requirements of this AD for that engine.

(i) Definition

For the purpose of this AD, calculate ''non-cumulative tolerance'' by adding 50 engine cycles to the inspection interval of 400 engine cycles since the last inspection. For example, you may add 50 additional engines cycles to the 400 cycles since last inspection requirement to obtain an inspection interval of 450 engine cycles. Once this non-cumulative tolerance has been applied, all repetitive inspection intervals are required within 400 engine cycles of the previous inspection.

(j) No Reporting Requirement

No reporting requirement contained within the MSB referenced in paragraphs (g)(1) and (2) of this AD are required by this AD.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

(1) For more information about this AD, contact Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7146; fax: 781–238–7199; email: *barbara.caufield@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2018–0085, dated April 13, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2018–0949.

(m) Material Incorporated by Reference

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

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

(i) Safran Helicopter Engines Mandatory Service Bulletin 283 72 0813, Version A, dated February 26, 2018.

(ii) [Reserved]

(3) For Safran Helicopter Engines service information identified in this AD, contact Safran Helicopter Engines, S.A., 40220 Tarnos, France; phone: +33 5 59 74 45 15; internet address: *https://www.safran-helicopter-engines.com/services/technical-assistance.*

(4) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued in Burlington, Massachusetts, on February 21, 2019.

Robert J. Ganley,

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

[FR Doc. 2019–03641 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0787; Airspace Docket No. 18–ASW–12]

RIN 2120–AA66

Establishment of Class E Airspace; Coushatta, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at The Red River Airport, Coushatta, LA. Controlled airspace is necessary to accommodate new standard instrument approach procedures developed at The Red River Airport, for the safety and management of instrument flight rules (IFR) operations.

DATES: Effective 0901 UTC, April 25, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at The Red River Airport, Coushatta, LA, to support IFR operations at the airport.

History

On December 19, 2018, the FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 65113) for Docket No. FAA–2018–0787, to establish Class E airspace extending upward from 700 feet above the surface at The Red River Airport, Coushatta, LA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of The Red River Airport, Coushatta, LA, to accommodate new standard instrument approach procedures developed for the airport, for the safety and management of instrument flight rules (IFR) operations.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental

Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

ASW LA E5 Coushatta, LA [New]

The Red River Airport, LA
(Lat. 31°59′25″ N, long 093°18′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Red River Airport.

Issued in Fort Worth, Texas, on February 21, 2019.

John Witucki,

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

[FR Doc. 2019–03615 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0987; Airspace Docket No. 18–ASO–19]

RIN 2120–AA66

Amendment of Class E Airspace; Auburn, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface at Auburn University Regional Airport, Auburn, AL, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving this airport. Also, this action recognizes the airport's name change and updates the airport's geographic coordinates. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, April 25, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 63447, December 10, 2018) for Docket No. FAA–2018–0987 to amend Class E airspace at Auburn University Regional Airport, Auburn, AL, to support IFR operations at this airport.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet or more above the surface within an 6.9-mile radius (increased from a 6.5-mile radius) and adds an extension of 11-miles southwest of Auburn University Regional Airport, Auburn, AL, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at Auburn University Regional Airport. Also, this action recognizes the airport's name change to Auburn University Regional Airport, (from Auburn-Opelika Robert G. Pitts Airport), and the geographic coordinates of the airport are amended to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

ASO AL E5 Auburn, AL [Amended]

Auburn University Regional Airport, AL
(Lat. 32°36′54″ N, long. 85°26′02″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Auburn University Regional Airport, and within 1.6-miles each side of the 237° bearing from the airport, extending from the 6.9-mile radius to 11 miles southwest of the airport.

Issued in College Park, Georgia, on February 20, 2019.

Geoff Lelliott,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2019–03613 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 575

Annual Adjustment of Civil Monetary Penalty To Reflect Inflation

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Final rule.

SUMMARY: In compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Act) and Office of Management and Budget (OMB) guidance, the National Indian Gaming Commission (NIGC or Commission) is amending its civil monetary penalty rule to reflect an annual adjustment for inflation in order to improve the penalty's effectiveness and maintain its deterrent effect. The Act provides that the new penalty level must apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES: This final rule is effective March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Armando J. Acosta, Senior Attorney, Office of General Counsel, National Indian Gaming Commission, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74). Beginning in 2017, the Act requires agencies to make annual inflationary adjustments to their civil monetary penalties by January 15th of each year, in accordance with annual OMB guidance.

II. Calculation of Annual Adjustment

In December of every year, OMB issues guidance to agencies to calculate the annual adjustment. According to OMB, the cost-of-living adjustment multiplier for 2019 is 1.02522, based on the Consumer Price Index for the month of October 2018.

Pursuant to this guidance, the Commission has calculated the annual adjustment level of the civil monetary penalty contained in 25 CFR 575.4 (''The Chairman may assess a civil fine, not to exceed $51,302 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation . . .''). The 2019 adjusted level of the civil monetary penalty is $52,596 ($51,302 × 1.02522).

III. Regulatory Matters

Regulatory Planning and Review

This final rule is not a significant rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy or will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients.

(4) This regulatory change does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Commission certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule makes annual adjustments for inflation.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule will not result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Nor will

this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate of more than $100 million per year on state, local, or tribal governments or the private sector. The rule also does not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings

Under the criteria in Executive Order 12630, this final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' Thus, a takings implication assessment is not required.

Federalism

Under the criteria in Executive Order 13132, this final rule has no substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation. It is written in clear language and contains clear legal standards.

Consultation With Indian Tribes

In accordance with the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments,* Executive Order 13175 (59 FR 22951, November 6, 2000), the Commission has determined that consultations with Indian gaming tribes is not practicable, as Congress has mandated that annual civil penalty adjustments in the Act be implemented no later than January 15th of each year.

Paperwork Reduction Act

This final rule does not affect any information collections under the Paperwork Reduction Act.

National Environmental Policy Act

This final rule does not constitute a major federal action significantly affecting the quality of the human environment.

Information Quality Act

In developing this final rule, the Commission did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply

This final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

The Commission is required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule that the Commission publishes must:

(a) Be logically organized;

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

(c) use clear language rather than jargon;

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

(e) use lists and tables wherever possible.

Required Determinations Under the Administrative Procedure Act

In accordance with the Act, agencies are to annually adjust civil monetary penalties without providing an opportunity for notice and comment, and without a delay in its effective date. Therefore, the Commission is not required to complete a notice and comment process prior to promulgation.

List of Subjects in 25 CFR Part 575

Administrative practice and procedure, Gaming, Indian lands, Penalties.

For the reasons set forth in the preamble, the Commission amends 25 CFR part 575 as follows:

PART 575—CIVIL FINES

■ 1. The authority citation for part 575 continues to read as follows:

Authority: 25 U.S.C. 2705(a), 2706, 2713, 2715; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 575.4 [Amended]

■ 2. Amend the introductory text of § 575.4 by removing ''$51,302'' and adding in its place ''$52,596''.

Dated: January 8, 2019.

Jonodev O. Chaudhuri,

Chairman,

Kathryn Isom-Clause,

Vice Chair,

E. Sequoyah Simermeyer,

Associate Commissioner.

[FR Doc. 2019–03475 Filed 2–28–19; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 337

[Docket ID: DOD–2019–OS–0004]

RIN 0790–AK48

Availability of DoD Directives, DoD Instructions, DoD Publications, and Changes

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's obsolete regulation which established a subscription service that entitled subscribers to receive new and revised DoD issuances cleared for public release. This rule predated the free, publicly available, online collection of DoD Directives, Instructions, Publications, and Changes. The subscription service was discontinued, and the content of this rule is obsolete.

DATES: This rule is effective on March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Morgan E. Park at 571–372–0489.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this rule removal in the CFR for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing obsolete information. This regulation was last updated on December 10, 1991 (56 FR 64482), prior to the discontinuation of the subscription service. DoD issuances are publicly available on the DoD Directives Division's website: *http://www.esd.whs.mil/DD/DoD-Issuances/.*

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 337

Freedom of information, Government publications.

PART 337—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 337 is removed.

Dated: February 26, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–03674 Filed 2–28–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–1059]

RIN 1625–AA00

Safety Zones; Tappan Zee Bridge Demolition, Hudson River; South Nyack and Tarrytown, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for navigable waters within approximately a 2,500 foot radius of the center of the old Tappan Zee Bridge east cantilever span. The two safety zones are needed to protect personnel, vessels, and the marine environment from potential hazards created by dropping the east cantilever span by explosive charges into the Hudson River. Entry of vessels or persons into either of these two safety zones is prohibited unless specifically authorized by the Captain of the Port New York or a designated representative.

DATES: This rule is effective without actual notice from March 1, 2019 through April 31, 2019. For the purposes of enforcement, actual notice will be used from January 12, 2019 through March 1, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov*, type USCG–2018–1059 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Waterways Management Division, U.S. Coast Guard Sector New York, telephone (718) 354–4195, email *Jeff.M.Yunker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port New York and New Jersey
DBO USCG First District Bridge Office
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
NYSTA New York State Thruway Authority
RNA Regulated Navigation Area
§ Section
TFR Temporary Final Rule
TIR Temporary Interim Rule
U.S.C. United States Code

II. Background Information and Regulatory History

On September 26, 2013, the Coast Guard published a TIR establishing a RNA on the navigable waters of the Hudson River, NY, for the Tappan Zee Bridge replacement project (78 FR 59231). We received no comments on the September 26, 2013 TIR. No public meeting was requested, and no public meeting was held. Construction on the Tappan Zee Bridge replacement project began on October 1, 2013.

On July 25, 2014, the Coast Guard published a change to the original TIR which established a new safety zone and expanded the RNA to create both an Eastern and Western RNA for the Tappan Zee Bridge replacement project on navigable waters of the Hudson River, NY (79 FR 43250). We received two comments on the July 25, 2014, TIR. The first comment referenced an unrelated rulemaking effort to establish anchorage locations along the Hudson River. The second comment merely provided the environmental checklist for the TIR. No public meeting was requested, and no public meeting was held.

On August 23, 2018 the NYSTA requested the RNAs and safety zone be extended until December 31, 2019, to complete all remaining contract operations in and over the Hudson River, including, but not limited to, steel erection, concrete bridge deck placements, installation of navigation lighting, and removal of the original Tappan Zee Bridge. On December 21, 2018, the Coast Guard published a change to the original TIR extending the RNAs and safety zone effective date to December 31, 2019 (83 FR 65521).

On November 9, 2018, the Coast Guard received the contractor's preliminary plan and procedures for explosives handling, and their east cantilever span salvage plan. The contractor has since deployed heavy lifting chains along the Hudson Riverbed beneath the east cantilever span, east of the Federal navigation channel. These heavy chains will be used to lift and remove the east cantilever span from the Hudson Riverbed after it has been felled from the existing bridge structure by explosive charges. The Hudson River will be closed to all vessels within approximately a 2,500 foot radius of the center of the east cantilever span, unless authorized by the COTP or his designated representative during these operations. These two safety zones will provide this 2,500 foot restricted area that is not currently within the boundaries of the existing eastern RNA codified at 33 CFR 165.T01–0174.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because the plans for using explosive charges to drop the east cantilever span into the Hudson River was only recently finalized and provided to the Coast Guard, which did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before demolition commences. Timely action is needed to respond to the potential safety hazards associated with this demolition project. It would be impracticable and contrary to the public interest to publish an NPRM because we must establish these two safety zones prior to demolition on January 12, 2019, to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge project. A delay of the demolition to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the completion date of the bridge project and subsequent reopening of the Hudson River for normal operations. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the use of explosives to drop the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed and subsequent removal of the

east cantilever span from the Hudson River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with the use of explosives to drop the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed, tentatively scheduled no earlier than Saturday, January 12, 2019, will be a safety concern for anyone within a 2,500-foot radius of the center of the east cantilever span of the old Tappan Zee Bridge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the two safety zones during the dropping of the east cantilever span of the old Tappan Zee Bridge.

IV. Discussion of the Rule

This rule establishes two safety zones, a North Safety Zone and a South Safety Zone, from 7:00 a.m. on January 12, 2019 through 11:59 p.m. on April 31, 2019. This rule is tentatively scheduled to be enforced from 7:00 a.m. until 10:00 a.m. on January 12, 2019. The two safety zones cover all navigable waters of the Hudson River within approximately a 2,500 foot radius of the center of the old Tappan Zee Bridge east cantilever span in approximate position 41°04′12.3″ N, 073°52′40.1″ W (NAD 83). The two safety zones are immediately adjacent, north and south, of the existing eastern RNA, and immediately adjacent, east, of the existing safety zone, codified at 33 CFR 165.T01–0174.

The North Safety Zone includes all waters of the Hudson River north of the old Tappan Zee Bridge, and east of the existing construction safety zone, from surface to bottom, bound by the following approximate positions: 41°04′21.96″ N, 073°52′03.25″ W, thence to 41°04′26.27″ N, 073°52′19.82″ W, thence to 41°04′26.53″ N, 073°53′20.07″ W, thence to 41°04′37.50″ N, 073°53′20.59″ W, thence to 41°04′37.50″ N, 073°52′21.65″ W, thence to the point of origin (NAD 83).

The South Safety Zone includes all waters of the Hudson River south of the old Tappan Zee Bridge, and east of the existing construction safety zone, from surface to bottom, bound by the following approximate positions: 41°03′46.91″ N, 073°52′05.89″ W, thence to 41°03′56.69″ N, 073°52′24.75″ W, thence to 41°03′56.92″ N, 073°53′18.84″ W, thence to 41°03′46.92″ N, 073°53′18.42″ W, thence to the point of origin (NAD 83).

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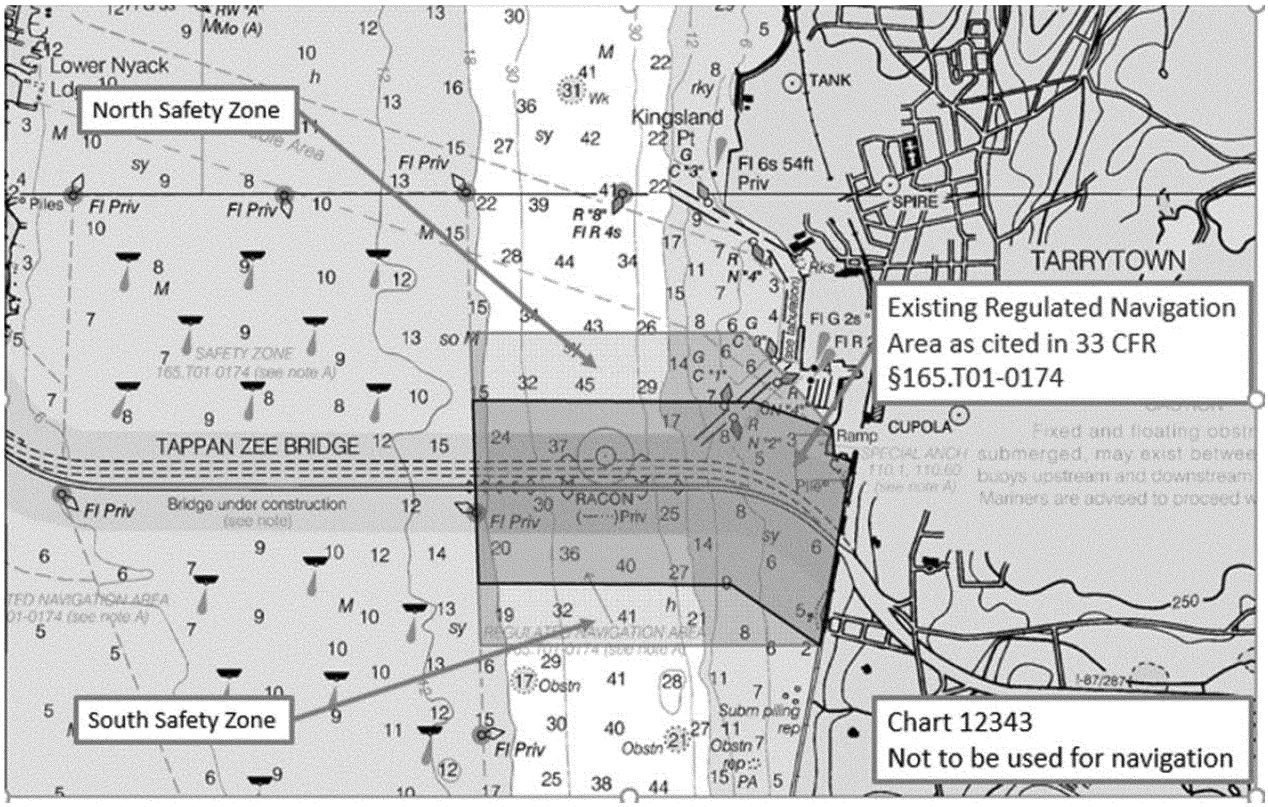

Additional illustrations showing the location of these safety zones are available in the docket.

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The Coast Guard is publishing this rulemaking to be effective, and enforceable, through April 31, 2019 in case the project is delayed due to construction delays or unforeseen circumstances.

The duration of the two safety zones are intended to protect personnel, vessels, and the marine environment in these navigable waters during the use of explosives to drop the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed. No vessel or person will be permitted to enter the two safety zones without obtaining permission from the COTP or a designated representative.

The Coast Guard will notify the public and local mariners of these two safety zones through the Local Notice to Mariners and/or Broadcast Notice to Mariners via VHF–FM marine channel 16 in advance of any scheduled enforcement period.

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 following reasons: (1) The two safety zones only impact a small designated area of the Hudson River, (2) the two safety zones will only be enforced during the demolition and cleanup of the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed, (3) vessels not constrained by their draft or length may still transit from the north, to, and from, the marina located in Tarrytown, NY on the east shore of the Hudson River, (4) the demolition operations are scheduled in the Winter when recreational vessel traffic is less frequent.

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 two safety zones 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 does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 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 two safety zones during demolition and cleanup operations that will prohibit entry within a 2,500 foot radius of the center of the old Tappan Zee Bridge east cantilever span during the use of explosives to drop the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed. 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. Add § 165.T01–1059 to read as follows:

§ 165.T01–1059 Safety Zones, Tappan Zee Bridge Demolition, Hudson River; South Nyack and Tarrytown, NY.

(a) *North safety zone boundaries.* The following is a safety zone: All waters of the Hudson River north of the old Tappan Zee Bridge, and east of the existing construction safety zone, from surface to bottom, bound by the following approximate positions: 41°04′21.96″ N, 073°52′03.25″ W, thence to 41°04′26.27″ N, 073°52′19.82″ W, thence to 41°04′26.53″ N, 073°53′20.07″ W, thence to 41°04′37.50″ N, 073°53′20.59″ W, thence to 41°04′37.50″ N, 073°52′21.65″ W, thence to the point of origin (NAD 83).

(b) *South safety zone boundaries.* The following is a safety zone: All waters of the Hudson River south of the old Tappan Zee Bridge, and east of the existing construction safety zone, from surface to bottom, bound by the following approximate positions: 41°03′46.91″ N, 073°52′05.89″ W, thence to 41°03′56.69″ N, 073°52′24.75″ W, thence to 41°03′56.92″ N, 073°53′18.84″ W, thence to 41°03′46.92″ N, 073°53′18.42″ W, thence to the point of origin (NAD 83).

(c) *Definitions.* The following definitions apply to this section:

Designated representative means any Coast Guard commissioned, warrant, petty officer, or designated Patrol Commander of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessels means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) *Regulations.* When these two safety zones are enforced, the following regulations, along with those contained in § 165.23 apply:

(1) During periods of enforcement no person or vessel may enter or remain in either of the two safety zones described in paragraphs (a) and (b) of this section unless authorized by the COTP or the COTP's designated representative.

(2) Persons and vessels may request permission to enter the zone on VHF–16.

(3) Any vessels permitted to enter these zones must comply with all orders and directions from the COTP or the COTP's designated representative.

(4) Upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Notwithstanding anything contained in this section, the Rules of the Road in 33 CFR subchapter E, part 84, are still in effect and must be strictly adhered to at all times.

(d) *Enforcement periods.* This regulation is enforceable 24 hours a day from 7:00 a.m. on January 12, 2019 until 11:59 p.m. on April 31, 2019, but will only be enforced during the use of explosives to drop the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed. The demolition operations that will require enforcement of the two safety zone regulations are tentatively scheduled to take place on January 12, 2019, from approximately 7:00 a.m. until 10:00 a.m., unless delayed. The COTP will provide notice of the channel closure by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and/or Local Notice to Mariners.

(1) If enforcement is suspended, the COTP will provide a notice of the suspension of enforcement by appropriate means. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and/or Local Notice to Mariners.

(2) Violations of this regulation may be reported to the COTP at (718) 354–4353 or on VHF-Channel 16.

Dated: January 3, 2019.

J.P. Tama,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2019–03716 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–1081]

RIN 1625–AA67

Security Zones; Dignitary Arrival/Departure and United Nations Meeting, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the Marine Air Terminal, LaGuardia Airport Security Zone to expand the existing security zone boundary north along the Rikers Island Bridge to the intersecting point on the southern tip of Rikers Island then east to the western end of LaGuardia Airport. This expanded security zone is necessary to protect the port, waterfront facilities, and waters of the United States from terrorism, sabotage, or other subversive acts and incidents of a similar nature during visits to New York City by various dignitaries.

DATES: This rule is effective April 1, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–1081 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 MST1 Kristina Pundt, Sector New York Waterways Division, U.S. Coast Guard; telephone 718–354–4352, email *Kristina.H.Pundt@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
RNA Regulated Navigation Area

II. Background Information and Regulatory History

On September 29, 2014, the Coast Guard published an NPRM with a request for comments entitled, ''Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY'' in the **Federal Register** (79 FR 58298). This NPRM proposed to disestablish three RNAs and replace

each with a security zone. No comments nor requests for a public meeting were received. On December 30, 2014 the Coast Guard published a Final Rule titled, ''Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY'' in the **Federal Register** (79 FR 78308). This final rule disestablished the RNAs and replaced them with three security zones. One of the security zones established was the Marine Air Terminal, LaGuardia Airport security zone.

On May 22, 2018, the Coast Guard published an NPRM titled, ''Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY'' in the **Federal Register** (83 FR 23619). This NPRM proposed to modify the existing Marine Air Terminal, LaGuardia Airport security zone due to location adjustments of security staging areas, and invited comments on our proposed regulatory action related to this security zone. During the comment period that ended July 23, 2018, the Coast Guard received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1. Due to location adjustments of the security staging areas, the Coast Guard has determined that the existing security zone does not provide an adequate level of security. The modification will allow enforcement of a security zone that will minimize threat exposure. The purpose of this rule is to protect the port, waterfront facilities, and waters of the United States from terrorism, sabotage, or other subversive acts and incidents of a similar nature during visits to New York City by various dignitaries.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 22, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule modifies an existing security zone. The modification expands the existing security zone boundary north along the Rikers Island Bridge to the intersecting point on the southern tip of Rikers Island then east to the western end of LaGuardia Airport.

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 limited size and enforcement of the security zone. Although expanding upon the current security zone, the modification only encompasses a small designated area of Bowery Bay. Additionally, the security zone will only be enforced during the infrequent visits of domestic and foreign dignitaries for as limited duration as necessary to safeguard against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule would allow vessels to seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard 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 security 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 the modification of a security zone that would prohibit entry into Bowery Bay for a limited duration and for a limited number of instances each year. 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. In § 165.164, revise paragraph (a)(3) to read as follows:

§ 165.164 Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

(a) * * *

(3) *Marine Air Terminal, LaGuardia Airport Security Zone.* All waters of Bowery Bay, Queens, New York, inside of a line drawn from the start of the Rikers Island Bridge in Queens at approximate position 40°46′37″ N, 073°53′30″ W to the intersecting point on the southern side of Rikers Island at approximate position 40°47′12″ N, 073°53′06″ W, then a line drawn east to the western end of LaGuardia Airport at approximate position 40°47′00″ N, 073°52′44″ W, then a line drawn south following the shoreline back to the point of origin at 40°46′37″ N, 073°53′30″ W (NAD 1983).

* * * * *

Dated: December, 4, 2018.

J.P. Tama,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2019–03717 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 461

RIN 1830–AA31

Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act)

AGENCY: Department of Education.

ACTION: Correcting amendment.

SUMMARY: On August 19, 2016, the Department of Education (Department) established regulations to implement changes to the Adult Education and Family Literacy Act (AEFLA) resulting from the enactment of the Workforce Innovation and Opportunity Act (WIOA or the Act). The 2016 final regulations clarified provisions in AEFLA and also identified for removal regulations no longer applicable to the AEFLA program. The preamble discussed our intent to remove certain regulations. However, language necessary to remove those regulations from the Code of Federal Regulations was inadvertently omitted from the 2016 final rule. Through this document we are now removing those regulations.

DATES: *Effective date:* These regulations are effective March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Hugh Reid, U.S. Department of Education, 400 Maryland Avenue SW, Room 11114 PCP, Washington, DC 20202–2500. Telephone: (202) 245–7491. Email: *Hugh.Reid@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Final Regulatory Changes

Background

On April 16, 2015, we published in the **Federal Register** a notice of proposed rulemaking (NPRM) for the Programs and Activities Authorized by AEFLA under Title II of WIOA (80 FR 20968). References to 34 CFR part 461 were included in that NPRM. In the Background section we indicated that the Department proposes to remove 34 CFR parts 460 and 461 ''because these regulations are no longer applicable to the Federal adult education program.'' These regulations are no longer enforceable because they were promulgated under the National Literacy Act (Pub. L. 102–73) (NLA) in 1992, which was superseded by Title II of the Workforce Investment Act of 1998.

On August 19, 2016, the Department issued a final rule in which the Secretary established regulations to implement changes to AEFLA resulting from the enactment of WIOA (81 FR 55525). These final regulations clarified the provisions in AEFLA, and the preamble also discussed our intent to remove 34 CFR part 461. However, we inadvertently omitted language necessary to remove 34 CFR part 461 from the Code of Federal Regulations.

Through this document, we are amending the regulations in title 34 of the Code of Federal Regulations applicable to Programs and Activities Authorized by AEFLA (Title II of WIOA) to remove 34 CFR part 461.

This action is consistent with Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' signed by President Trump on February 24, 2017. That Executive Order established a Federal policy to alleviate unnecessary regulatory burdens on the American people and, in Section 3(a), directed each Federal agency to establish a regulatory reform task force, the duty of which is to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification.

Waiver of Proposed Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). There is good cause to waive rulemaking here as unnecessary.

Rulemaking is ''unnecessary'' in those situations in which ''the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Utility Solid Waste Activities Group* v. *EPA,* 236 F.3d 749, 755 (D.C. Cir. 2001), *quoting* U.S. Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* 31 (1947) and *South Carolina* v. *Block,* 558 F. Supp. 1004, 1016 (D.S.C. 1983).

This regulatory action merely effectuates our intent from the 2016 rulemaking to remove 34 CFR part 461 from the Code of Federal Regulations. In 2016, when we intended to remove 34 CFR part 461 from the Code of Federal Regulations, we provided notice and an opportunity to comment on this regulatory action. At that time, we received no comments regarding the proposed removal of 34 CFR part 461. Furthermore, these regulations were promulgated under the National Literacy Act (Pub. L. 102–73) (NLA) in 1992, which was superseded by Title II of the Workforce Investment Act of 1998. Therefore, there is good cause to remove 34 CFR part 461.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). For the same reasons there is good cause to waive rulemaking under 5 U.S.C. 553(b)(B), there is good cause to make these final regulations effective upon publication.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 601(2), the Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

Paperwork Reduction Act of 1995

This rule does not contain any information collection requirements. The previously OMB-approved information collection (OMB Control Number 1800–0026) associated with 34 CFR part 461 expired on 03/01/2006.

Accessible Format

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this 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.

List of Subjects in 34 CFR Part 461

Adult education, Grant programs—education, Reporting and recordkeeping requirements, Teachers.

Dated: February 26, 2019.

Scott Stump,

Assistant Secretary for Career, Technical, and Adult Education.

PART 461—[Removed and Reserved]

For the reasons discussed in the preamble, and under the authority of section 414 of the Department of Education Organization Act, 20 U.S.C. 3474, and section 437 of the General Education Provisions Act (20 U.S.C. 1221e–3), the Secretary of Education amends chapter IV of title 34 of the Code of Federal Regulations by removing and reserving part 461.

[FR Doc. 2019–03660 Filed 2–28–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

43 CFR Part 10

[NPS–WASO–NAGPRA–27233; PPWOVPADU0/PPMPRLE1Y.Y00000]

RIN 1024–AE56

Civil Penalties Inflation Adjustments

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This rule revises U.S. Department of the Interior regulations implementing the Native American Graves Protection and Repatriation Act to provide for annual adjustments of civil penalties to account for inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

DATES: This rule is effective on March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Manager, National NAGPRA Program, National Park Service, 1849 C Street NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (''the Act''). The Act requires Federal agencies to adjust the level of civil monetary penalties annually for inflation no later than January 15 of each year.

II. Calculation of Annual Adjustments

The Office of Management and Budget (OMB) recently issued guidance to assist Federal agencies in implementing the annual adjustments required by the Act which agencies must complete by January 15, 2019. *See* December 14, 2018, Memorandum for the Heads of Executive Departments and Agencies, from Mick Mulvaney, Director, Office of Management and Budget, re: *Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (M–19–04). The guidance states that the cost-of-living adjustment multiplier for 2019, based on the Consumer Price Index (CPI–U) for the month of October 2018, not seasonally

adjusted, is 1.02522. (The annual inflation adjustments are based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U.) The guidance instructs agencies to complete the 2019 annual adjustment by multiplying each applicable penalty by the multiplier, 1.025221, and rounding to the nearest dollar.

The annual adjustment applies to all civil monetary penalties with a dollar amount that are subject to the Act. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. This final rule adjusts the following civil monetary penalties contained in the Department regulations implementing the Native American Graves Protection and Repatriation Act (NAGPRA) for 2019 by multiplying 1.025221 by each penalty amount as updated by the adjustment made in 2018:

CFR citation	Description of the penalty	Current penalty including catch-up adjustment	Annual adjustment (multiplier)	Adjusted penalty
43 CFR 10.12(g)(2)	Failure of Museum to Comply	$6,666	1.025221	$6,834
43 CFR 10.12(g)(3)	Continued Failure to Comply Per Day	1,334	1.025221	1,368

Consistent with the Act, the adjusted penalty levels for 2019 will take effect immediately upon the effective date of the adjustment. The adjusted penalty levels for 2019 will apply to penalties assessed after that date including, if consistent with agency policy, assessments associated with violations that occurred on or after November 2, 2015. The Act does not, however, change previously assessed penalties that the Department is collecting or has collected. Nor does the Act change an agency's existing statutory authorities to adjust penalties.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this 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 rule in a manner consistent with these requirements.

B. Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This rule is not an E.O. 13771 regulatory action because this rule is not significant under Executive Order 12866.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The RFA does not apply to this final rule because the Office of the Secretary is not required to publish a proposed rule for the reasons explained below in Section III.M.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175 and Departmental policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian

tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

J. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information see 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Administrative Procedure Act

The Act requires agencies to publish annual inflation adjustments by no later than January 15 of each year, notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). OMB has interpreted this direction to mean that the usual APA public procedure for rulemaking—which includes public notice of a proposed rule, an opportunity for public comment, and a delay in the effective date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the Act requires. Accordingly, we are issuing the 2019 annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the **Federal Register**.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians—claims, Indians—lands, Museums, Penalties, Public lands, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Office of the Secretary amends 43 CFR part 10 as follows.

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 16 U.S.C. 470dd; 25 U.S.C. 9, 3001 *et seq.*

§ 10.12 [Amended]

■ 2. In § 10.12:
■ i. In paragraph (g)(2), remove ''$6,666'' and add in its place ''$6,834''.
■ ii. In paragraph (g)(3), remove ''$1,334'' and add in its place ''$1,368''.

Andrea Travnicek,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, exercising the authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019–03659 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 18–182]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, via a non-substantive change request, an information collection associated with the Commission's Report and Order, FCC 18–182, published February 15, 2019. This document is consistent with that Report and Order, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the requirements.

DATES: The amendments to 47 CFR 36.3(b), published at 84 FR 4351 (February 15, 2019), are effective March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Marvin Sacks, Pricing Policy Division, Wireline Competition Bureau, at (202) 418–2017 or via email at *marvin.sacks@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on February 22, 2019, OMB approved, via a non-substantive change request, an information collection requirement associated with amendments to 47 CFR 36.3(b) adopted in the Commission's Report and Order, FCC 18–182, published at 84 FR 4351. The OMB Control Number is 3060–0400 (Part 61, Tariff Review Plan (TRP)). The Commission publishes this document as an announcement of the effective date of the amendments to 47 CFR 36.3(b). If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street, SW, Washington, DC 20554. Please include the OMB Control Number, 3060–0400, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on February 22, 2019, for the non-substantive change to information requirements contained in the Commission's rules at 47 CFR 36.3(b).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0400. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

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

OMB Control Number: 3060–0400.

OMB Approval Date: October 13, 2017.

OMB Expiration Date: October 31, 2020.

Title: Part 61, Tariff Review Plan (TRP).

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,749 respondents; 4,165 responses.

Estimated Time per Response: 0.50–53 hours.

Frequency of Response: On occasion, annual, biennial, and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–155. 201–203, 208, 251–271, 403, 502, and 503 of the Communications Act of 1934, as amended.

Total Annual Burden: 60,878 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's Rules.

Needs and Uses: In the Report and Order, FCC 18–182, the Commission amended its part 36 jurisdictional separations rules by providing rate-of-return carriers that elected to freeze their separation category relationships in 2001 a one-time opportunity to unfreeze and update those relationships so that they can categorize their costs based on current circumstances.

Title 47 CFR 36.3(b), as amended in this *Order,* requires compliance with information requirements that have already been accounted for and approved under OMB Control Number 3060–0400, Part 61, Tariffs (Other than Tariff Review Plan) (TRP). The burden and costs of this collection have not changed since they were last approved by OMB.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–03676 Filed 2–28–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769–8162–02]

RIN 0648–XG834

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2019 total allowable catch of pollock in the West Yakutat District of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 26, 2019, through 2400 hours, A.l.t., December 31, 2019.

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

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

The 2019 total allowable catch (TAC) of pollock in the West Yakutat District of the GOA is 5,748 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish of the GOA (83 FR 8768, March 1, 2018) and inseason adjustment (84 FR 33, January 4, 2019).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2019 TAC of pollock in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,648 mt, and is setting aside the remaining 100 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 pollock in the West Yakutat District of the GOA.

After the effective date of this closure 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 closure of directed fishing for pollock in the West Yakutat District of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 25, 2019.

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: February 26, 2019.

Karen H. Abrams,

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

[FR Doc. 2019–03671 Filed 2–26–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 41
Friday, March 1, 2019

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[NRC–2008–0421]

RIN 3150–AI40

Ground Water Protection at Uranium In Situ Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment; extension of comment period.

SUMMARY: On January 31, 2019, the U.S. Nuclear Regulatory Commission (NRC) requested comments on whether it should proceed with a rulemaking to promulgate a generic set of regulations for the operation of uranium *in situ* recovery (ISR) facilities, including ground water protection requirements, to standardize existing NRC ISR licensing and oversight practices. The public comment period originally was scheduled to close on March 4, 2019. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The due date of comments requested in the document published on January 31, 2019 (84 FR 574) is extended. Comments should be filed no later than May 3, 2019. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0421. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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 G. Carrera, telephone: 301–415–1078; email: *Andrew.Carrera@nrc.gov;* or Gary Comfort, telephone: 301–415–8106; email: *Gary.Comfort@nrc.gov.* Both are staff of the Office of Nuclear Material Safety and Safeguards, 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–2008–0421 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–2008–0421.
- *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 ''*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.*
- *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–2008–0421 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.

II. Discussion

On January 31, 2019, the NRC published a document in the **Federal Register** (84 FR 574) requesting comments on whether it should proceed with a rulemaking to promulgate a generic set of regulations for the operation of ISR facilities, including ground water protection requirements, to standardize existing NRC ISR licensing and oversight practices. The public comment period was originally scheduled to close on March 4, 2019. By letter dated February 20, 2019 (ADAMS Accession No. ML19052A425), the National Resources Defense Council, on behalf of itself and the New Mexico Environmental Law Center, Energy & Conservation Law, the Powder River Basin Resource Center, and the Western Mining Action Project, requested that the NRC extend the deadline to comment by 60 days. The NRC is granting this request and will extend the public comment period until May 3, 2019, to allow more time for members of the public to submit their comments.

Dated at Rockville, Maryland, this 25th day of February 2019.

For the Nuclear Regulatory Commission.

Theresa V. Clark,

Deputy Director, Division of Rulemaking, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–03556 Filed 2–28–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2014–0118]

RIN 3150–AJ41

Enhanced Security of Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised regulatory basis; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting comments on a draft revised regulatory basis to support a rulemaking that would update special nuclear material (SNM) physical protection requirements for fuel cycle facilities. The rule would establish generically applicable security requirements similar to those imposed by security orders issued by the NRC following the terrorist attacks of September 11, 2001.

DATES: Submit comments by April 1, 2019. Comments received after this date will be considered if it is practical to do so; however, the NRC is only able to ensure consideration of comments received on or before this date.

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–2014–0118. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.
- *Comments that contain proprietary or sensitive information:* Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document to determine the most appropriate method for submitting those comments.

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: Timothy Harris, Office of Nuclear Security and Incident Response, telephone: 301–287–3594, email: *Timothy.Harris@nrc.gov*; or Edward Lohr, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–0253, email: *Edward.Lohr@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–2014–0118 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–2014–0118.
- *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 ''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.*
- *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–2014–0118 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 to not 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.

Please note that the NRC will not provide formal written responses to each of the comments received on the draft revised regulatory basis. However, the NRC will consider all comments received in the development of the final regulatory basis.

II. Discussion

On April 22, 2015, the NRC published in the **Federal Register** (ADAMS Accession No. ML14321A007) a regulatory basis for the ''Rulemaking for Enhanced Security of Special Nuclear Material'' proposed rule. The proposed rule would amend the requirements in part 73 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Physical Protection of Plants and Materials.'' The Commission recently directed that resources be allocated for this rulemaking with the exclusive scope of codifying the requirements of the post-9/11 security orders.

Consistent with this direction and the NRC's rulemaking process, the staff has prepared a draft revised regulatory basis to describe and document the results of assessments and analyses performed by the NRC in support of the proposed rule for enhancing security for SNM. The draft revised regulatory basis document is available in ADAMS under Accession No. ML18332A053.

The 2015 regulatory basis set forth four objectives for the rulemaking: (1) Make generically applicable physical protection measures similar to those imposed by security orders issued following the terrorist attacks of September 11, 2001 (post-9/11 security orders); (2) consider risk insights gained from new national laboratory studies, implementation and oversight experience, and international guidance; (3) improve consistency and clarity of SNM physical protection requirements; and (4) use a risk-informed and performance-based structure. The NRC

now is pursuing only the first objective in the scope of the rulemaking.

III. Cumulative Effects of Regulations

The cumulative effects of regulation (CER) describe the challenges that licensees or other impacted entities (such as Agreement State agency partners) may face while implementing new regulatory positions, programs, and requirements (*e.g.,* rules, generic letters, backfits, inspections). The CER is an organizational effectiveness challenge that results from a licensee or impacted entity implementing a number of complex positions, programs, or requirements within a limited implementation period and with available resources (which may include limited available expertise to address specific issues). The NRC has implemented CER enhancements into the rulemaking process to facilitate public involvement throughout the rulemaking process. Therefore, the NRC is specifically requesting comment on the cumulative effects that may result from a proposed rule. In developing comments on the 2019 draft revised regulatory basis, consider the following questions:

(1) In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any new proposed requirements, including changes to programs, procedures, or the facility?

(2) If current or projected CER challenges exist, what should be done to address this situation (*e.g.,* if more time is required to implement the new requirements, what period of time would be sufficient, and why would such a time frame be necessary)?

(3) Do other regulatory actions (*e.g.,* orders, generic communications, license amendment requests, and inspection findings of a generic nature) by the NRC or other agencies influence the implementation of the potential proposed requirements?

(4) Are there unintended consequences? Does a proposed rulemaking action create conditions that would be contrary to the purpose and objectives of the 10 CFR part 73 rulemaking? If so, what are the consequences and how should they be addressed?

(5) Please consider providing information on the estimates of the costs and benefits of a proposed rulemaking action, which can be used to support any additional regulatory analysis by the NRC.

IV. Availability of Documents

The documents identified in this **Federal Register** notice are available to interested persons through one or more of the methods listed in the **SUPPLEMENTARY INFORMATION** section of this document.

The NRC may post additional materials related to this rulemaking activity to the Federal rulemaking website at *www.regulations.gov* under NRC–2014–0118. These documents will inform the public of the current status of this activity and/or provide additional material for use at future public meetings.

The Federal rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0118); 2) click the ''Sign up for Email Alerts'' link; and 3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, 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 in the **Federal Register** on June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

Dated at Rockville, Maryland, this 26th day of February 2019.

For the Nuclear Regulatory Commission.

Theresa V. Clark,

Deputy Director, Division of Rulemaking, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–03718 Filed 2–28–19; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0114; Product Identifier 2018–NM–146–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company 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 The Boeing Company Model 737 series airplanes. This proposed AD was prompted by a report that structural fatigue cracks can develop in certain aluminum pressure module check valves prior to the design limit. This proposed AD would require an inspection to determine the part numbers of the four hydraulic systems A and B pressure module check valves and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 15, 2019.

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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, 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. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0114.

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–2019–0114; 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 in the **ADDRESSES** section. Comments will be

available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3548; email: *douglas.tsuji@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–2019–0114; Product Identifier 2018–NM–146–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 proposed AD.

Discussion

We have received a report indicating that structural fatigue cracks can develop in certain aluminum pressure module check valves installed in the hydraulic systems A and B pressure modules prior to the design limit. We have determined that it is necessary to replace Parker pressure module check valves, which are made of aluminum, with Crissair pressure module check valves, which are manufactured with stainless steel, which is not susceptible to fractures. Structural fatigue cracks in a check valve, if not addressed, could cause separation of the check valve head from the check valve body when hydraulic pressure is applied, resulting in injuries to maintenance personnel.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information.

- Boeing Special Attention Requirements Bulletin 737–29–1123 RB, dated October 2, 2018.
- Boeing Special Attention Requirements Bulletin 737–29–1126 RB, dated October 2, 2018.
- Boeing Special Attention Requirements Bulletin 737–29–1127 RB, dated October 8, 2018.

These documents are distinct since they apply to different airplane models. The service information describes procedures for an inspection to determine the part numbers of the four hydraulic systems A and B pressure module check valves and applicable on-condition actions. On-condition actions include replacement of Parker pressure module check valves, part number H61C0552M1, with Crissair pressure module check valves, part number 1C4196.

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

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 accomplishment of the actions identified in the service information described previously, except as described under ''Differences Between Service Information and Proposed AD,'' and except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0114.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Difference Between Service Information and Proposed AD

The effectivity of Boeing Special Attention Requirements Bulletin 737–29–1123 RB, dated October 2, 2018, is limited to Boeing Model 737–600, –700, –700C, –800, –900, and –900ER airplanes, line numbers 1 through 7032 inclusive. However, the applicability of this proposed AD includes all Boeing Model 737–600, –700, –700C, –800, –900, and –900ER airplanes. Because the affected parts are rotable parts, we have determined that these parts could later be installed on airplanes that were initially delivered with acceptable parts, thereby subjecting those airplanes to the unsafe condition. This difference has been coordinated with Boeing.

The effectivity of Boeing Special Attention Requirements Bulletin 737–29–1126 RB, dated October 2, 2018, is limited to Boeing Model 737–8 and 737–9 airplanes, line numbers 5602 through 7050 inclusive. However, the applicability of this proposed AD includes all Boeing Model 737–8 and 737–9 airplanes, and any future 737 series derivative model. Because the affected parts are rotable parts, we have determined that these parts could later be installed on airplanes that were initially delivered with acceptable parts, thereby subjecting those airplanes to the unsafe condition. This difference has been coordinated with Boeing.

Costs of Compliance

We estimate that this proposed AD affects 1,747 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for Parker pressure module check valves, part number H61C0552M1.	1 work-hour × $85 per hour = $85.	$0	$85	$148,495

We estimate the following costs to do any necessary on-condition actions (per check valve replacement) that would be required. 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
2 work-hours × $85 per hour = $170	$6,652	$6,822

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 and associated appliances 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):

The Boeing Company: Docket No. FAA–2019–0114; Product Identifier 2018–NM–146–AD.

(a) Comments Due Date

We must receive comments by April 15, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Unsafe Condition

This AD was prompted by a report indicating that structural fatigue cracks can develop in certain aluminum pressure module check valves prior to the design limit. We are issuing this AD to address structural fatigue cracks in certain aluminum check valves, which could cause separation of the check valve head from the check valve body when hydraulic pressure is applied, resulting in injuries to maintenance personnel.

(f) Compliance

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

(g) Required Actions

(1) For airplanes identified as Group 1 in Boeing Special Attention Requirements Bulletin 737–29–1127 RB, dated October 8, 2018: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) Except as specified by paragraph (h)(3) of this AD: For airplanes identified as Groups 2 and 3 in Boeing Special Attention Requirements Bulletin 737–29–1127 RB, dated October 8, 2018; at the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–29–1127 RB, dated October 8, 2018, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–29–1127 RB, dated October 8, 2018.

Note 1 to paragraphs (g)(2) through (g)(4) of this AD: Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 737–29–1123, dated October 2, 2018; Boeing Special Attention Service Bulletin 737–29–1126, dated October 2, 2018; and Boeing Special Attention Service Bulletin 737–29–1127, dated October 8, 2018; which are referred to in Boeing Special Attention Requirements Bulletin 737–29–1123 RB, dated October 2, 2018; Boeing Special Attention Requirements Bulletin 737–29–1126 RB, dated October 2, 2018; or Boeing Special Attention Requirements Bulletin 737–29–1127 RB, dated October 8, 2018.

(3) Except as specified by paragraph (h)(1) of this AD: For Boeing Model 737–600, –700, –700C, –800, –900, and –900ER airplanes that have an original certificate of airworthiness or export certificate of airworthiness issued on or before the effective date of this AD; at the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–29–1123 RB, dated October 2, 2018, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–29–1123 RB, dated October 2, 2018.

(4) Except as specified by paragraph (h)(2) of this AD: For Boeing Model 737–8 and 737–9 airplanes that have an original certificate of airworthiness or export certificate of airworthiness issued on or before the

effective date of this AD; at the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–29–1126 RB, dated October 2, 2018, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–29–1126 RB, dated October 2, 2018.

(h) Exceptions to Service Information Specifications

For purposes of determining compliance with the requirements of this AD:

(1) Where Boeing Special Attention Requirements Bulletin 737–29–1123 RB, dated October 2, 2018, uses the phrase ''the original issue date of Requirements Bulletin 737–29–1123 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Special Attention Requirements Bulletin 737–29–1126 RB, dated October 2, 2018, uses the phrase ''the original issue date of Requirements Bulletin 737–29–1126 RB,'' this AD requires using ''the effective date of this AD.''

(3) Where Boeing Special Attention Requirements Bulletin 737–29–1127 RB, dated October 8, 2018, uses the phrase ''the original issue date of Requirements Bulletin 737–29–1127 RB,'' this AD requires using ''the effective date of this AD.''

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a Parker pressure module check valve, part number H61C0552M1, or hydraulic pressure module assembly, part number 65–17821–() that contains a Parker pressure module check valve, part number H61C0552M1, on any airplane.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

(1) For more information about this AD, contact Douglas Tsuji, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3548; email: *douglas.tsuji@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, 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 February 22, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–03431 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0023; Product Identifier 2018–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company 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 The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, and 737–500 series airplanes. This proposed AD was prompted by reports of cracks in the frame webs below the passenger floor. This proposed AD would require repetitive inspections for cracking of the fuselage lower lobe frames, and applicable on-condition actions. This proposed AD would also provide an optional terminating action for certain repetitive inspections. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 15, 2019.

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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, 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. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0023.

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–2019–0023; 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Lu Lu, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3525; email: *lu.lu@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–2019–0023; Product Identifier 2018–NM–145–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 proposed AD.

Discussion

We have received reports of cracks in frame webs below the passenger floor in Section 46 from Station (STA) 727A to STA 1006 between Stringers S–17L and S–17R. The cracks have been found at the typical and triangular stringer cutouts, the frame inner chord common to the channel-cargo floor support, the failsafe chord attachments to the frame web, the frame integral inboard chord at the voice recorder support, the open tooling holes, the lower lobe frame splice, the frame web at stringer clips, the frame web at the water tank shear clip attachments, and the frame web locations hidden by stringer clips and intercostals on opposite sides of the frame. Additionally, there was one report of a frame web severed that did not occur at a fatigue detail.

Cracks in frame webs, if not addressed, could result in propagation of cracks until the frame severs. Continued operation of the airplane with multiple adjacent severed frames, or the combination of a severed frame adjacent to fuselage skin chem-milled cracks, could result in an uncontrolled decompression and loss of structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018. The service information describes procedures for repetitive inspections for cracking of the fuselage lower lobe frames, applicable on-condition actions, and an optional modification of the tooling holes and insulation attachment holes. On-condition actions include repetitive inspections for cracking of the lower lobe frames, repair, and repetitive post-repair inspections for cracking.

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

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 accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0023.

Costs of Compliance

We estimate that this proposed AD affects 262 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 56 work-hours × $85 per hour = $4,760 per inspection cycle.	$0	Up to $4,760 per inspection cycle	Up to $1,247,120 per inspection cycle.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Modification	1 work-hour × $85 per hour = $85 per hole	(*)	$85 per hole.

* Parts and materials (*e.g.,* rivets, bolts, collars, primer, adhesive) are supplied by the operator.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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 and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

We have 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 that the 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):

The Boeing Company: Docket No. FAA–2019–0023; Product Identifier 2018–NM–145–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by April 15, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, and 737–500 series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks in the frame webs below the passenger floor. We are issuing this AD to address cracks that could propagate until the frame severs. Continued operation of the airplane with multiple adjacent severed frames, or the combination of a severed frame adjacent to fuselage skin chem-milled cracks, could result in an uncontrolled decompression and loss of structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018 (''BASB 737–53A1362''): Within 120 days after the effective date of this AD, accomplish actions to correct the unsafe condition (*e.g.,* inspections and on-condition actions) using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(h) Required Actions for Group 2 Through 20 Airplanes

For airplanes identified as Group 2 through 20 in BASB 737–53A1362: Except as specified in paragraph (i) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of BASB 737–53A1362, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of BASB 737–53A1362.

(i) Optional Terminating Action for Certain Repetitive Inspections

For airplanes identified as Group 2 through 20 in BASB 737–53A1362, accomplishment of part 13, ''Preventive Modification of the Frame Web Tooling Hole and Insulation Attachment Hole in the Section 46 Lower Lobe Frame,'' in accordance with the Accomplishment Instructions of BASB 737–53A1362, terminates the repetitive open hole high frequency eddy current inspections required by paragraph (h) of this AD, for the modified tooling hole or insulation attachment hole location only.

(j) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where BASB 737–53A1362 uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(2) Where BASB 737–53A1362 specifies contacting Boeing for repair instructions or alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions, using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

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

(4) Except as required by paragraph (j)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(4)(ii) of this AD apply.

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

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

(l) Related Information

(1) For more information about this AD, contact Lu Lu, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3525; email: *lu.lu@faa.gov.*

(2) For information about AMOCs, contact George Garrido, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch; 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email: *george.garrido@faa.gov.*

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, 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 February 21, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–03468 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0086; Airspace Docket No. 19–ASO–1]

RIN 2120–AA66

Proposed Amendment of Class D and Class E Airspace, and Revocation of Class E Airspace; Brooksville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and Class E airspace extending upward from 700 feet above the surface at Brooksville-Tampa Bay Regional Airport, (previously Hernando County Airport), Brooksville, FL, by recognizing the airport's name change and updating the airport's geographic coordinates. Also, Class E surface airspace would be removed as it is no longer necessary. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport. This action also would replace the outdated term Airport/Facility Directory with the term Chart Supplement in the legal descriptions of associated Class D airspace of this airport.

DATES: Comments must be received on or before April 15, 2019.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Bldg. Ground Floor Rm W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2019–0086; Airspace Docket No. 19–ASO–1, at the beginning of your comments. You may also submit and review received comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class D and Class E airspace extending upward from 700 feet above the surface, and remove Class E surface airspace at Brooksville-Tampa Bay Regional Airport, (previously Hernando County Airport), Brooksville, FL, to support standard instrument approach procedures for IFR operations at this airport.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2019–0086 and Airspace Docket No. 19–ASO–1) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number.) You may also submit comments through the internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2019–0086; Airspace Docket No. 19–ASO–1.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective

September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend Class D and Class E airspace extending upward from 700 feet above the surface by recognizing the airport's name change to Brooksville-Tampa Bay Regional Airport, (formerly Hernando County Airport), and updating the geographic coordinates of the airport to be in concert with the FAA's aeronautical database. Also, Class E surface airspace would be removed, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at this airport. Additionally, an editorial change would be made replacing the outdated term Airport/Facility Directory with the term Chart Supplement in the associated Class D airspace legal description of this airport.

Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6005, respectively of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Brooksville, FL [Amended]

Brooksville-Tampa Bay Regional Airport, FL (Lat. 28°28′25″ N, long. 82°27′20″ W)

That airspace extending upward from the surface up to and including 1,500 feet MSL within a 5.1-mile radius of the Brooksville-Tampa Bay Regional Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ASO FL E2 Brooksville, FL [Remove]

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

* * * * *

ASO FL E5 Brooksville, FL [Amended]

Brooksville-Tampa Bay Regional Airport, FL (Lat. 28°28′25″ N, long. 82°27′20″ W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Brooksville-Tampa Bay Regional Airport.

Issued in College Park, Georgia, on February 21, 2019.

Geoff Lelliott,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2019–03614 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105600–18]

RIN 1545–BO62

Guidance Related to the Foreign Tax Credit, Including Guidance Implementing Changes Made by the Tax Cuts and Jobs Act; Notice of Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document announces a public hearing on proposed regulations concerning guidance related to the Foreign Tax Credit, including guidance implementing changes made by the Tax Cuts and Jobs Act.

DATES: The public hearing is scheduled for Thursday, March 14, 2019, at 10 a.m. The public comment period for these regulations ended on February 5, 2019. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Friday, March 8, 2019.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–105600–18), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–105600–18), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (IRS REG–105600–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jeffrey P. Cowan, Office of Associate Chief Counsel (International) at (202) 317–4924 (not a toll-free number); concerning information on the hearing Regina Johnson at (202) 317–6901 (not toll-free numbers) and/or to be placed on the building access list to attend the hearing, email *Regina.L.Johnson@IRSCOUNSEL.TREAS.GOV*).

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking appeared in the **Federal Register** on Friday, December 7, 2018 (83 FR 63200). The subject of the public hearing concerns proposed regulations that provide guidance related to the Foreign Tax Credit, including guidance implementing changes made by the Tax Cuts and Jobs Act. The public comment period for these regulations ended on February 5, 2019.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by February 5, 2019, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Friday, March 8, 2019.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317–6901 (not a toll-free number) or emailing *Regina.L.Johnson@IRSCOUNSEL.TREAS.GOV*).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2019–03769 Filed 2–27–19; 11:15 am]

BILLING CODE 4830–01–P

NATIONAL MEDIATION BOARD

29 CFR Part 1206

[Docket No. C–7198]

RIN 3140–AA01

Representation Procedures and Rulemaking Authority

AGENCY: National Mediation Board.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The National Mediation Board (NMB or Board) extends an invitation to interested parties to attend an open public hearing with the Board and its staff on March 28, 2019. The hearing will be held in Training Rooms 2 & 3 located on the 1st Floor of the Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005. During the hearing, the NMB invites interested persons to share their views on the proposed rules changes related to the decertification of representatives.

DATES: The hearing will be held on Thursday, March 28, 2019 from 10 a.m. to 4 p.m. Due to time and seating considerations, individuals desiring to attend the hearing, or to make a presentation before the Board, must notify the NMB staff, no later than 4 p.m. EDT on Friday, March 22, 2019.

ADDRESSES: The hearing will be held in the Training Rooms 2 & 3 located on the 1st Floor of the Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005. Requests to attend the hearing must be addressed to Mary Johnson, General Counsel, National Mediation Board, 1301 K Street NW, Suite 250-East, Washington, DC 20005. Written requests may also be made electronically to *legal@nmb.gov.* All communications must include Docket No. C–7198.

FOR FURTHER INFORMATION CONTACT: Mary Johnson, General Counsel, National Mediation Board, 202–692–5050, *legal@nmb.gov.*

SUPPLEMENTARY INFORMATION: The National Mediation Board will hold an open public hearing on Thursday, March 28, 2019, from 10 a.m. until 4 p.m. The purpose of the hearing will be to solicit views of interested persons concerning proposed rule changes. On Thursday, January 31, 2019, the NMB issued a Notice of Proposed Rulemaking (NPRM) (84 FR 612), proposing to amend its rules in relation to decertifying representatives. These rule changes are proposed to be codified at 29 CFR part 1206. In addition to the comment procedure outlined in the NPRM, the NMB is providing another opportunity for interested persons to provide their views to the Board on this important matter.

Individuals desiring to attend the hearing must notify the NMB staff, in writing, at the above listed physical or email address no later than 4p.m. EDT on March 22, 2019. If the individual desires to make a presentation to the Board at the hearing, he or she is required to submit a brief outline of the presentation when making the request. In addition, a full written statement must be submitted no later than 4 p.m. on Friday, March 22, 2019. In lieu of making an oral presentation, individuals may submit a written statement for the record.

To attend the hearing, all potential attendees must include in their request: (1) Their full name and (2) organizational affiliation (if any). Attendees are reminded to bring a photo identification card with them to the public hearing in order to gain admittance to the building. Due to the time and potential space limitations in the hearing room, the NMB will notify individuals of their attendance and/or speaking status (*i.e.,* preliminary time for their presentation) prior to the hearing. Individuals should be prepared to summarize their written statements at the hearing.

Agenda: The hearing will be limited to issues related to the NMB's proposed rule changes appearing in the **Federal Register** on January 31, 2019 at 84 FR 612.

Dated: February 26, 2019.

Mary Johnson,

General Counsel, National Mediation Board.

[FR Doc. 2019–03710 Filed 2–28–19; 8:45 am]

BILLING CODE 7550–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0058]

RIN 1625–AA08

Special Local Regulation; Lake Pontchartrain, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposed to establish a temporary special local regulation for certain navigable waters of Lake Pontchartrain in New Orleans, LA. This action is necessary to protect

persons and vessels from potential hazards created by the Kenner Super Boat Grand Prix Race. Entry of vessels or persons into this zone would be prohibited unless authorized by the Captain of the Port Sector New Orleans or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 1, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0058 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Benjamin Morgan, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2281, email *Benjamin.P.Morgan@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector New Orleans
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On January 19, 2019, Super Boat International Productions (SBIP) notified the Coast Guard that it would be conducting the Kenner Super Boat Grand Prix boat race from 10 a.m. to 5 p.m. on June 23, 2019. The race will take place on Lake Pontchartrain within the following coordinates: 30°03.056′ N/090°15.489′ W to 30°02.500′ N/090°13.547′ W to 30°02.717′ N/090°13.460′ W to 30°03.252′ N/090°15.374′ W. The Captain of the Port Sector New Orleans (COTP) has determined that potential hazards associated with the race would be a safety concern for anyone within the aforementioned coordinates. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041(a).

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary special regulation in the specified area from 10 a.m. to 5 p.m. on June 23, 2019. The race zone would cover all navigable waters within the following coordinates on Lake Pontchartrain in New Orleans, LA: 30°03.056′ N/090°15.489′ W to 30°02.500′ N/090°13.547′ W to 30°02.717′ N/090°13.460′ W to 30°03.252′ N/090°15.374′ W. The duration of the area is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled marine event. Only predesignated vessel(s) or person(s) would be permitted within the safety zone. The sponsor would designate a spectator zone on the north side of the race zone, as defined by the aforementioned coordinates, for vessels. No additional vessel(s) or person(s) would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. Vessels requiring entry into this regulated area must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200. Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. No spectator vessel would be allowed to anchor, block, loiter, or impede the through transit of participants or a designated patrol vessel in the regulated area during the effective dates and times, unless cleared for entry by the COTP or the designated representative. Any spectator vessel may anchor outside the regulated area. Spectator vessels might be moored to a waterfront facility within the regulated area in such a way that they would not interfere with the progress of the event. Such mooring would have to be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

The COTP or a designated representative might forbid and control the movement of all vessels in the regulated area. When hailed or signaled by a designated patrol vessel, a vessel would come to an immediate stop and comply with the directions given. Failure to do so might result in expulsion from the area, citation for failure to comply, or both. The COTP or a designated representative might 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 would 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 effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and duration of the temporary special local regulation. The regulated area would cover a small area of the navigable waters within the following coordinates on Lake Pontchartrain in New Orleans, LA: 30°03.056′ N/090°15.489′ W to 30°02.500′ N/090°13.547′ W to 30°02.717′ N/090°13.460′ W to 30°03.252′ N/090°15.374′ W. The duration of the regulated area would be seven hours on one day and would not be expected to significantly affect the vessel traffic on Lake Pontchartrain. The COTP would allow entry into the area on a case-by-case basis. Moreover, the Coast Guard would issue a Local Notice to Mariners (LNM), Marine Safety Information Bulletins (MSIBs), and/or Broadcast Notice to Mariners (BNM) via VHF–FM marine channel 16 about the zone. This would allow waterway users to plan accordingly for transits during this restriction.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the temporary regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please 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 proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 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 proposed rule involves a temporary specially regulated area lasting seven hours that would prohibit entry into the area within the following coordinates: 30°03.056′ N/ 090°15.489′ W to 30°02.500′ N/ 090°13.547′ W to 30°02.717′ N/ 090°13.460′ W to 30° 03.252′ N/ 090°15.374′ W. This action is categorically excluded from further review under 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**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 is amended to read as follows:

Authority: 46 U.S.C. 70041(a).

■ 2. Add § 100.T08–0058 to read as follows:

§ 100.T08–0058 Special Local Regulation; Lake Pontchartrain, New Orleans, LA.

(a) *Location.* The following area is a special local regulation: 30°03.056′ N/090°15.489′ W to 30°02.500′ N/090°13.547′ W to 30°02.717′ N/0 90°13.460′ W to 30°03.252′ N/090°′ 15.374′ W.

(b) *Effective period.* This section is effective from 10 a.m. through 5 p.m. on June 23, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into or remaining within this regulated area is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Vessels requiring entry into this regulated area must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(4) No spectator vessel is allowed to anchor, block, loiter, or impede the through transit of participants or a designated patrol vessel in the regulated area during the effective dates and times, unless cleared for entry by the COTP or the designated representative.

(5) Any spectator vessel may anchor outside the regulated area. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they do not interfere with the progress of the event. Such mooring have to be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(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 a designated 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. 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 regulated area through Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: February 22, 2019.

K.M. Luttrell,

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

[FR Doc. 2019–03645 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0228]

RIN 1625–AA09

Drawbridge Operation Regulation; Delaware River, Burlington, NJ and Bristol, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the SR 413/Burlington-Bristol Bridge across the Delaware River, mile 117.8, between Burlington, NJ and Bristol, PA. This proposed modification will allow the drawbridge to be maintained in closed-to-navigation and is necessary to accommodate bridge maintenance.

DATES: Comments and related material must reach the Coast Guard on or before April 1, 2019.

The Coast Guard anticipates that this proposed rule will be effective from 8 a.m. on February 15, 2019, through 7:59 a.m. on September 17, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0228 using Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

On April 26, 2018, the Coast Guard published a temporary deviation entitled ''Drawbridge Operation Regulation; Delaware River, Burlington, NJ and Bristol, PA'' in the **Federal Register** (83 FR 18226). This temporary deviation was to facilitate bridge maintenance and painting of the vertical lift span of the drawbridge from May 1, 2018, through September 30, 2018. During the planned maintenance period, a work platform would have reduced one half of the bridge span vertical clearance to approximately 58 feet above mean high water in the closed position and approximately 132 feet above mean high water in the open position.

On August 9, 2018, the Coast Guard published a cancellation of the temporary deviation entitled ''Drawbridge Operation Regulation; Delaware River, Burlington NJ and Bristol, PA'' in the **Federal Register** (83 FR 18226), in the **Federal Register** (83 FR 39361). The temporary deviation was cancelled due to delays in performing bridge maintenance outside the navigation span, thereby eliminating the need for a temporary deviation to facilitate bridge maintenance in the navigation span. Due to the cancellation of the work, the platform was not installed and the bridge is operating under its regular operating schedule in 33 CFR 117.716 (a). In accordance with 33 CFR 117.35(e), the drawbridge was returned to its regular operating schedule upon publication of the cancellation.

The Burlington County Bridge Commission, who owns and operates the SR 413/Burlington-Bristol Bridge across the Delaware River, mile 117.8, between Burlington, NJ and Bristol, PA, has requested this modification to allow the drawbridge to be maintained in the closed-to-navigation position to facilitate maintenance and painting of the vertical lift span of the drawbridge.

III. Discussion of Proposed Rule

The SR 413/Burlington-Bristol Bridge across the Delaware River, mile 117.8,

between Burlington, NJ and Bristol, PA, has a vertical clearance of 61 feet above mean high water in the closed position and 135 feet above mean high water in the open position. The current operating schedule for the drawbridge is published in 33 CFR 117.716(a).

Under this proposed temporary final rule, the drawbridge will be maintained in the closed-to-navigation position and open on signal if at least a two-hour notice is given, from 8 a.m. on February 15, 2019, through 7:59 a.m. on September 17, 2019. At all other times, the drawbridge will operate per 33 CFR 117.716(a).

This proposed temporary final rule is necessary to facilitate safe and effective bridge maintenance and painting of the vertical lift span of the drawbridge, while providing for the reasonable needs of navigation. Multiple work platforms will reduce the entire bridge span vertical clearance to approximately 58 feet above mean high water in the closed position and approximately 132 feet above mean high water in the open position. Maintenance personnel, equipment and materials will be located inside the work platforms while maintenance and painting is being performed. To facilitate an opening of the bridge, equipment and materials will need to be secured inside or removed from the work platforms and personnel will need to vacate the work platforms.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that vessels can still transit the bridge on signal if at least a two-hour notice is given.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please 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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice.*

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.716 by adding paragraph (c) to read as follows:

§ 117.716 Delaware River.

* * * * *

(c) The draw of the SR 413 (Burlington-Bristol) Bridge, mile 117.8, between Burlington, NJ and Bristol, PA, shall open on signal if at least a two-hour notice is given from 8 a.m. on February 15, 2019, through 7:59 a.m. on September 17, 2019.

Dated: February 13, 2019.

K.M. Smith,

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

[FR Doc. 2019–03715 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0024]

RIN 1625–AA00

Safety Zone; Xterra Swim, Intracoastal Waterway; Myrtle Beach, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain waters of the Atlantic Intracoastal Waterway in Myrtle Beach, South Carolina. This action is necessary to provide for the safety of the swimmers, participant vessels, spectators, and the general public during the swim portion of the Xterra Triathlon. This proposed rulemaking would prohibit non-participant vessels and persons from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 1, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0024 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Justin.C.Heck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
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, Purpose, and Legal Basis

On January 9, 2019, Go Race Productions notified the Coast Guard that it would be sponsoring the Xterra Swim from 7:30 a.m. to 8:30 a.m. on April 14, 2019. Approximately 200 swimmers are anticipated to participate in the swim portion of the event, which is a 1500-yard course located on certain waters of the Atlantic Intracoastal Waterway in Myrtle Beach, South Carolina. The Captain of the Port Charleston (COTP) has determined that the potential hazards associated with the swim portion of the Triathlon constitute a safety concern for anyone within the proposed safety zone.

The purpose of this rulemaking is to ensure safety of life on the navigable water of the United States during the event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone on the Atlantic Intracoastal Waterway in Myrtle Beach, South Carolina from 7:00 a.m. to 9:00 a.m. on April 14, 2019. The duration of the safety zone is intended to ensure the safety of life on the navigable waters of the Intracoastal before, during, and after the scheduled 7:30 a.m. to 8:30 a.m. swim portion of the Triathlon. Approximately 200 participants are expected to participate in the swim portion of the race. No vessel or person would be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking.

Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for one hour; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and 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 entity'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

We have considered the impact of this proposed rule on small entities. This rule may affect the following entities, some of which may be small entities: The owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons stated in section IV.A. above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please 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 proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management 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 proposed rule involves a temporary safety zone with a two-hour enforcement period that would prohibit entry to certain waters of the Atlantic Intracoastal Waterway during the swim portion of a Triathlon. Normally such actions are categorically excluded from further review under paragraph L 60(a) 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**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165. T07–0024 to read as follows:

§ 165.T07–0024 Safety Zone; Xterra Swim, Myrtle Beach SC.

(a) *Location.* The following is a safety zone: Certain waters of the Atlantic Intracoastal Waterway within the following two points of position and the North shore: 33°45′03″ N, 78°50′47″ W to 33°45′18″ N, 78°50′14″ W, located in Myrtle Beach, South Carolina. All coordinates are North American Datum 1983.

(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 Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on from 7:00 a.m. until 9:00 a.m. on April 14, 2019.

Dated: February 19, 2019.

John W. Reed,

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

[FR Doc. 2019–03646 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 60 and 63

[NPS–WASO–NHPA; PPWONRADE2, PMP00EI05.YP0000]

RIN 1024–AE49

National Register of Historic Places

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to revise regulations governing the listing of properties in the National Register of Historic Places. The proposed changes would implement the 2016 Amendments to the National Historic Preservation Act, extend the timeline for the Keeper to respond to appeals, and ensure that if the owners of a majority of the land area in a proposed historic district object to listing, the proposed district will not be listed over their objection. The rule would also make several minor, non-substantive changes to existing regulations.

DATES: Comments on the proposed rule must be received by 11:59 p.m. EST on April 30, 2019.

Information Collection Requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by April 30, 2019.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024–AE49, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail to:* National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.
- *Instructions:* Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words ''National Park Service'' or ''NPS'' and must include the docket number or RIN (1024–AE49) for this rulemaking. Comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and search for the RIN (1024–AE49).

Information Collection Requirements: Send your comments and suggestions on the information collection requirements to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to NPS Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail). Please reference OMB Control Number 1024–0018/AE49 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Joy Beasley, Acting Associate Director, Cultural Resources Partnerships and Science & Keeper of the National Register of Historic Places, NPS (WASO), (202) 354–6991, *joy_beasley@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Historic Preservation Act (NHPA), enacted in 1966, declared a national policy to preserve significant historic sites, districts, buildings, structures, and objects ''for the inspiration and benefit of the people of the United States.'' 54 U.S.C. 302101. It has been amended several times since 1966, with the most substantive amendments in 1980 and 1992.

The NHPA authorized the Secretary of the Interior (Secretary) to ''expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.'' 54 U.S.C. 302101. This authority is delegated by the NHPA to the Director of the National Park Service (NPS) and has been further delegated to the Keeper of the National Register (Keeper). 54 U.S.C. 300316; 36 CFR 60.3(f). The National Register is the official list of the Nation's historic places worthy of preservation. As of November 26, 2018, a total of 94,364 properties (*i.e.,* districts, buildings, structures, sites, and objects) were listed in the National Register. The Keeper processes an average of 1,619 National Register actions annually that are submitted by States, Tribes, and Federal agencies.

The NHPA directed the NPS to promulgate regulations for ''nominating properties for inclusion on, and removal from, the National Register'' and for ''notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register. . .'' 54 U.S.C. 302103(2).

The State Historic Preservation Officer (SHPO) for the state in which a property is located ''is responsible for identifying and nominating eligible properties to the National Register'' (36 CFR 60.6(a)), and for ascertaining whether the property owner of an individual property or a majority of private property owners within a proposed district object to listing a property in the National Register. 36 CFR 60.6(g). Each Federal agency is required by the NHPA to designate a qualified official to be the agency's Federal Preservation Officer (FPO). 54 U.S.C. 306104. FPOs are responsible for nominating properties under the jurisdiction or control of the Federal agency. Pursuant to the 1992 Amendments to the NHPA, Tribal Historic Preservation Officers (THPOs) can assume nomination responsibilities on tribal land, including nominating eligible properties for listing in the National Register.

Prior to submitting a nomination involving privately owned property to the Keeper, SHPOs are required to notify private property owners that a nomination of their property is being considered or, in the case of a historic district, that their property is within a district considered for nomination. Any private property owner who objects to a nomination is required to submit a notarized statement to the SHPO certifying that the party is the sole or partial owner of the private property and objects to the listing. 36 CFR 60.6(g). The objections are treated as votes against listing the property. NPS regulations state that—in the case of districts that are nominated—each owner of private property in that district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district. 36 CFR 60.6(g). The SHPO is responsible for determining whether a majority of owners have objected, 36 CFR 60.6(g), though objections may also be submitted to the Keeper after a property has been nominated and prior to listing. 36 CFR 60.6(r). If a majority of owners object to listing, the property cannot be listed, but the Keeper is required to determine whether or not it is eligible for listing in the National Register. 54 U.S.C. 302105(b)–(c); 36 CFR 60.6(g) and (n).

The section of the NHPA that authorizes the Secretary to establish criteria for properties to be included in the National Register and to promulgate regulations requires ''consultation with national historical and archeological associations.'' 54 U.S.C. 302103. This applies to the promulgation of regulations regarding: Nominations of properties for inclusion in the National Register; removing properties from the National Register; considering appeals; making eligibility determinations; and owner notification. 54 U.S.C. 302103. After publication of the proposed rule, the NPS will consult with SHPOs, FPOs, the National Trust for Historic Preservation, and other national historical and archeological associations.

Proposed Rule

This rule proposes several changes to the regulations governing the listing of properties in the National Register of Historic Places. One group of changes would implement the 2016 Amendments to the NHPA.[1] Another group of changes would ensure that if the owners of a majority of the land area in a proposed historic district object to listing, the proposed district will not be listed over their objection. The rule would also extend the timeline for the Keeper to respond to appeals of the failure of a nominating authority to nominate a property for inclusion in the National Register. Finally, the rule would make a number of minor, non-substantive changes.

Implementation of the 2016 Amendments to the NHPA

The 2016 Amendments to the NHPA inserted a new subsection (c) into 54 U.S.C. 302104 that sets forth a specific process for Federal agencies to directly submit nominations of properties for inclusion in the National Register. This process applies only to properties that are under the jurisdiction or control of a Federal agency.

Specifically, subsection (c) states that the Secretary, acting through the Director of the NPS, may accept a nomination directly from a Federal agency, but only if six preconditions are satisfied. These are: (1) The FPO has sent a completed nomination to the SHPO for review and comment regarding the adequacy of the nomination, the significance of the property, and the property's eligibility for the National Register; (2) the SHPO has been given 45 days to make a recommendation regarding the nomination to the FPO, and failure to comment within this timeframe constitutes ''a recommendation to not support the nomination''; (3) the chief elected officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located have been notified and given 45 days in which to comment; (4) the FPO has forwarded the nomination to the Keeper after determining that all procedural requirements have been met, including those described in (1)–(3) above, that the nomination is adequately documented, that the nomination is technically and professionally correct and sufficient, and—at the discretion of the FPO—including an opinion as to whether the property meets the National Register criteria for evaluation; (5) notice has been provided by the Keeper in the **Federal Register** that the nominated property is being considered for listing in the National Register that includes

[1] The 2016 Amendments to the NHPA were enacted on December 16, 2016 in Title VIII—National Historic Preservation Amendment Act of the National Park Service Centennial Act (Pub. L. 114–289).

any comments and the recommendation of the SHPO and a declaration whether the SHPO has responded within the 45 day-period of review; and (6) the Keeper addresses in the **Federal Register** any comments from the SHPO that do not support the nomination of the property in the National Register before the property is included in the National Register.

The proposed rule would revise the regulations governing the process for nominations by SHPOs in 36 CFR 60.6, nominations directly by Federal agencies in 36 CFR 60.9, and concurrent State and Federal nominations in 36 CFR 60.10, all to be consistent with 54 U.S.C. 302104(c). In addition to ensuring that the six preconditions that are stated in the 2016 Amendments are also stated affirmatively in the regulations, the proposed rule would remove regulatory provisions that are inconsistent with the establishment by Congress of an exclusive process for the nomination of properties directly by Federal agencies. The rule would remove paragraph (y) in section 60.6 that provides an alternative process for the FPO to forward nominations of federal property to the Keeper that were originally submitted by a SHPO. The rule would remove a provision in paragraph (h) of section 60.9 that provides for the automatic listing of nominated Federal property within 45 days of receipt by the Keeper unless the Keeper disapproves the nomination or an appeal is filed. The proposed rule would also revise the regulations governing the publication of notice in the **Federal Register** in 36 CFR 60.13 to be consistent with the notice requirements in 54 U.S.C. 302104(c).

The proposed rule would revise paragraphs (a) and (c) of 36 CFR 63.4 in response to the 2016 Amendments. The rule would revise paragraph (a) to clarify that the Keeper will not make eligibility determinations for properties if the Keeper returns the nomination to the Federal agency for technical or professional revision, or because of procedural requirements. The NPS believes this change is required by the 2016 Amendments because nominations can only be accepted by the Keeper if all procedural requirements have been met, including that the nomination is technically and professionally correct and sufficient. If a nomination is not accepted by the Keeper, the Keeper cannot make an eligibility determination. The NPS seeks comment from the public on this interpretation of the 2016 Amendments or, in contrast, whether the NPS could interpret the 2016 Amendments to allow the Keeper to make eligibility determinations for properties whose nominations have been returned to the Federal Agency.

Outside of the nomination process for listing properties in the National Register, SHPOs and FPOs sometimes request that the Keeper determine whether a property is eligible for listing in the National Register. This usually occurs as part of compliance with section 106 of the NHPA, which requires Federal agencies to take into account the effects of their undertakings on historic properties. Paragraph (c) of 36 CFR 63.4 allows the Keeper to make eligibility determinations for properties that have not been nominated if necessary to assist in the protection of historic resources. The proposed rule would revise paragraph (c) to clarify that the Keeper may only determine the eligibility of properties for listing in the National Register after consultation with and a request from the appropriate SHPO and concerned Federal agency, if any. The NPS believes this change is consistent with the 2016 Amendments and other provisions in the NHPA that dictate the roles and responsibilities of SHPOs and FPOs. See 54 U.S.C. 302104(a); 54 U.S.C. 306101(a) and (c).

Subsection (d)(2) of 54 U.S.C. 302104, unchanged by the 2016 Amendments, provides in pertinent part that ''Any person or local government may appeal to the Secretary . . . the failure of a nominating authority to nominate a property in accordance with this chapter.'' The proposed rule would clarify that the Keeper cannot hear an appeal of a Federal agency's failure to nominate a property unless all of the conditions precedent listed in 54 U.S.C. 302104(c) are met, including a requirement that the FPO forwards the nomination to the Keeper. If all of the criteria are not satisfied, the nomination is not properly before the Secretary and therefore the Secretary does not have jurisdiction to hear an appeal under 54 U.S.C. 302104(d)(2).

Related to appeals but unrelated to the 2016 Amendments, the proposed rule would extend the timeline for the Keeper to respond to the appellant and the applicable SHPO or FPO from 45 days to 60 days. The rule would also allow the Keeper to extend the initial 60-day period for an additional 30 days, upon the request of the appellant or the applicable SHPO or FPO. Upon receipt of an appeal, the Keeper routinely provides the applicable SHPO or FPO an opportunity to submit information and provide comment regarding the appeal, and these officials often request extensions of time in order to submit relevant information. These changes would provide SHPOs and FPOs with additional time to respond to the issues raised by appellants and to explain their position, and would provide the Keeper with additional time to resolve complex issues that are sometimes raised by appellants regarding the nomination of properties to the National Register.

Owner Objections to Nominations

In some cases, a property that is nominated for listing in the National Register will have more than one owner. This happens most often in the case of a proposed historic district, which is identified in the NHPA as a type of historic property that can be listed in the National Register. 54 U.S.C. 300308. Under the NHPA, if a majority of the owners of privately owned property object to the inclusion of the property in the National Register prior to listing, the property cannot be listed until the objection is withdrawn, but its eligibility must still be determined. 54 U.S.C. 302105. Owners are defined under regulations as individuals, corporations or partnerships that hold fee simple title to real property. 36 CFR 60.3(k). Owners are required to submit notarized objections prior to listing.

The proposed rule would revise 36 CFR 60.6 and 60.10 to provide that a property shall not be listed in the National Register if objections are received from either (i) a majority of the land owners, as existing regulations provide; or (ii) owners of a majority of the land area of the property. This proposal would ensure that if the owners of a majority of the land area in a proposed historic district object to listing, the proposed district will not be listed over their objection. The NPS seeks comment on whether it should remove the requirement that objecting property owners submit notarized statements certifying that they are the sole or partial owner of the property in order to submit an objection. The NPS seeks comment on whether there is an alternative way to certify ownership, or otherwise object to the listing of a property, that is less burdensome on the property owner but maintains or improves the fidelity of the objection process.

The proposed rule would also revise 36 CFR 60.6(g) to clarify that if the SHPO receives information that calls into question the accuracy of the owner or objector count, it is the SHPO's duty to exercise due diligence to ensure the accuracy of the owner and objector count prior to submitting a nomination to the Keeper. This proposed change is intended to prevent situations in which a nomination must be returned to the SHPO due to potential inaccuracies in the owner or objector count. The SHPO, not the Keeper, is in the best position to

determine the ownership of nominated properties, the number of owners within a nominated historic district, and the number of objections received with respect to a nominated property.

Paragraph (i) of section 60.9 allows any person or organization to petition the Keeper during the nomination process to accept or reject the nomination of a property by a FPO. Similarly, paragraph (t) of section 60.6 allows any person or organization to petition the Keeper during the nomination process to accept or reject the nomination of a property by a SHPO. The NPS seeks comment on whether these provisions are redundant with the requirement in section 60.13 that the NPS publish notice in the **Federal Register** asking for public comment on the significance of properties nominated for listing in the National Register.

Minor, Non-Substantive Changes

The NPS proposes to make several minor, non-substantive changes in order to remove outdated provisions and clarify existing regulations. The changes are identified in the table below.

Section	Proposed change	Purpose
§ 60.1(a)	Replace the citation to "16 U.S.C. 470 *et seq.*" with a citation to 54 U.S.C. 300101 *et seq.*"	These sections of Title 16 U.S. Code were recodified in Title 54.
§ 60.2(b)	Note that owners of property listed in the National Register may be considered for Federal grants for historic preservation "when available."	Clarify that these grants are subject to availability and not automatically given to property owners.
§ 60.2(c)	Replace the paragraph with an updated description of current tax incentives that may apply to listed properties.	Remove outdated references to provisions of the tax code that have been removed or substantially amended.
§ 60.3(a), (d), (j), (k), and (p)	Add updated and more diverse examples of historic districts, objects, sites, and structures.	Give the public better examples of the types of properties that are listed in the National Register.
§ 60.3(g)	Change the term "Multiple Resource Format submission" to "Multiple Property Submission/Multiple Property Documentation Form" and replace the definition of that submission/form.	The documents used to nominate multiple properties that share historical context and significance have changed.
§ 60.3(i)	Replace the title of the reference document from "How to Complete National Register Forms" to "How to Complete the National Register Registration Form".	The title of the document has changed.
§ 60.3(q)	Delete the definition of "Thematic Group Format submission".	This submission type has been superseded by the Multiple Property Submission/Multiple Property Documentation Form.
§ 60.4	In the last paragraph, update the reference to the guidance document further explaining the exception for properties that have achieved significance within the past 50 years.	The title of the document has changed.
§ 60.5(a)	Delete the sentence "For archival reasons, no other forms, photocopied or otherwise, will be accepted"	The sentence is obsolete because this is no longer a valid concern.
§ 60.6(e)	Change the term "Multiple Resource Format submission" to "Multiple Property Submission/Multiple Property Documentation Form".	The title of the documents used to nominate multiple properties that share historical context and significance has changed.
§ 60.6(h)	Delete paragraph	This paragraph is obsolete because it only applied to properties nominated prior to the effective date of the regulations.
§ 60.6(j)	Delete the phrase "on the nomination forms" in the second sentence.	This edit removes redundant language.
§ 60.6(o)	Update the references to the nomination form by replacing "block 12" with "Section 3". Update the certification by the SHPO in Section 3 to include an identification of the applicable criteria and level of significance for the property.	The nomination form has changed. No new information is being collected; information contained within the form has been moved to the cover page.
§ 60.6(w)	Replace the reference to nominations "rejected" by the Keeper with the term "returned" instead.	More accurately refer to nominations returned for correction and resubmission.
§ 60.14(b)(3)(iii)	Remove the requirement that the SHPO submit U.S. Geological Survey maps of moved properties.	With the advent of GPS and readily available online mapping sources, USGS quadrangle maps are no longer the required mapping form.
§ 60.14(b)(3)(iv) and (v)	Replace the requirements that the SHPO submit acreage and a verbal boundary description of moved properties with a requirement that the SHPO submit a "Continuation sheet with up-to-date Sections 2, 5, 7, and 10."	The level of specificity in the continuation sheet assists the preparers in providing the requisite information for the Keeper.

Compliance With Other Laws, Executive Orders and Department Policy. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 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. Executive Order 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. The NPS has developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information in the report entitled ''Cost-Benefit and Regulatory Flexibility Threshold Analyses: General Revisions to Regulations Governing the Listing of Properties in the National Register of Historic Places'' which is available online at *www.regulations.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule pertains to procedures governing the listing of properties in the National Register of Historic Places and 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. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and has determined that tribal consultation is not required because the rule will not have a substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act

This proposed rule contains existing and new information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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. OMB has reviewed and approved the information collection requirements associated with nominations for listing of historic properties in the National Register and assigned OMB Control Number 1024–0018 (expires 2/28/19, and in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB).

The information collection requiring OMB approval is the requirement for property owners to submit notarized letters to the SHPO objecting to the property being listed in the National Register. Additionally, we updated the name of Form 10–900–b to be ''Multiple Property Submission/Multiple Property Documentation Form'' (MPDF).

Title of Collection: Nomination of Properties for Listing in the National Register of Historic Places, 36 CFR 60 and 63.

OMB Control Number: 1024–0018.

Form Numbers: NPS Forms 10–900, 10–900a, and 10–900b.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals/households, private sector, and State/local/Tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $500 for costs associated with notarizing objection letters.

Activity	Annual number of responses	Estimated time per response (hours)	Total annual burden hours
Preparation and Submission of Nomination Forms (individuals) NPS Forms 10–900, 10–900–a, 10–900–b	90	250	22,500
Preparation and Submission of Nomination Forms (private sector) NPS Forms 10–900, 10–900–a, 10–900–b	5	250	1,250
Preparation and Submission of Nomination Forms (govt) NPS Forms 10–900, 10–900–a, 10–900–b	5	250	1,250
Review of Nomination Forms and Submission to NPS (govt)	1,282	6	7,692

Activity	Annual number of responses	Estimated time per response (hours)	Total annual burden hours
National Register Nominations Prepared by Consultants (individuals) NPS Forms 10–900, 10–900–a	635	120	76,200
Existing Multiple Property Submission by Consultants NPS Forms 10–900, 10–900–a	75	100	7,500
Newly Proposed MPS Cover Document Prepared by Consultants NPS Forms 10–900–a, 10–900–b	36	280	10,080
New Nominations Prepared and Submitted by Consultants (individuals) NPS Forms 10–900, 10–900–a	1	150	150
National Register District Nominations Prepared by Consultants (govt) NPS Forms 10–900–a, 10–900–b	435	230	100,050
Notarized Statement of Owner Objections	50	1	50
Total	2,614		226,722

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection by the date indicated in the **DATES** section to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). You may view the information collection request(s) at *http://www.reginfo.gov/public/do/PRAMain.* Please provide a copy of your comments to Phadrea D. Ponds, Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email to *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0018/AE49 in the subject line of your comments.

National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because the rule is covered by a categorical exclusion. NPS NEPA Handbook (2015) Section 3.2.H allows for the following to be categorically excluded: ''policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature.'' The NPS has also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects in not required.

Clarity of This Rule

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

(a) Be logically organized;

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

(c) Use common, everyday words and clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

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

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public Availability of Comments

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.

List of Subjects in 36 CFR Parts 60 and 63

Historic preservation.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR parts 60 and 63 as set forth below:

PART 60—NATIONAL REGISTER OF HISTORIC PLACES

■ 1. The authority citation for part 60 is revised to read as follows:

Authority: 54 U.S.C. 300101 *et seq.*

§ 60.1 [Amended]

■ 2. In § 60.1(a), remove ''16 U.S.C. 470 *et seq.*'' and add in its place ''54 U.S.C. 300101 *et seq.*''

■ 3. Amend § 60.2 by:

■ a. In paragraph (b) adding the phrase ''when available'' to the end of the sentence; and

■ b. Revising paragraph (c) to read as follows:

§ 60.2 Effects of listing under Federal law.

* * * * *

(c) If a property is listed in the National Register, certain provisions of the Internal Revenue Code that encourage historic preservation may apply. These may include an investment tax credit for the rehabilitation of depreciable historic structures or other tax incentives relating to conservation easements.

* * * * *

■ 5. In § 60.3:

■ a. Revise the examples in paragraphs (a) and (d);

■ b. Revise paragraph (g).
■ c. In paragraph (i), remove the phrase ''How to Complete National Register Forms'' and add in its place ''How to Complete the National Register Registration Form''.
■ d. Revise the examples in paragraphs (j), (l), and (p).
■ e. Remove and reserve paragraph (q).
The revisions to read as follows:

§ 60.3 Definitions.

(a) * * *

Examples to Paragraph (a)

Carolina, Clinchfield & Ohio Railroad Station and Depot, Johnson City, TN
E.E. Haugen House, Brookings, SD
St. Joseph's Roman Catholic Church, Massillon, OH

* * * * *

(d) * * *

Examples to Paragraph (d)

Capitol View Historic District, Atlanta, GA
Saratoga National Historical Park, Saratoga County, NY
Rockland Rural Historic District, Front Royal, VA

* * * * *

(g) *Multiple Property Submission/Multiple Property Documentation Form.* A Multiple Property Submission is the assembled individual registration forms together with the information common to the group of properties that serves as the historic context(s) and outlines the registration requirements for listing properties under that cover document, known as the Multiple Property Documentation Form (MPDF). The MPDF is a cover document and is not a nomination form in its own right. However, given that it serves as the basis for evaluating the National Register eligibility of individual properties associated with it, it is submitted by nominating authorities to the Keeper for approval.

* * * * *

(j) * * *

Examples to Paragraph (j)

Mural ''La Familia,'' San Juan, Puerto Rico
''Spirit of the American Doughboy'' Statue, Muskogee, OK
Hinckley State Line Marker, Ogema, MN

* * * * *

(l) * * *

Examples to Paragraph (l)

Bell Witch Cave, Adams, TN
Minertown, Carter, WI
Dunlap Colored Cemetery, Dunlop. KS
Port Gibson Battle Site, Port Gibson, MS

* * * * *

(p) * * *

Examples to Paragraph (p)

Marion Steam Shovel, LeRoy, NY
Ross Grain Elevator, Audubon, IA
Albion River Bridge, Albion, CA

* * * * *

■ 6. Amend § 60.4(g) by revising the last sentence to read as follows:

§ 60.4 Criteria for evaluation.

* * * * *

(g) * * * Criterion consideration (g) is further described and addressed in NPS guidance entitled ''Guidelines for Evaluating and Nominating Properties that Have Achieved Significance within the Past Fifty Years.''

§ 60.5 [Amended]

■ 7. Amend § 60.5 by removing the last sentence of paragraph (a).
■ 8. In § 60.6:
■ a. In paragraph (e), remove the phrase ''Multiple Resource and Thematic Group Format'' and add in its place ''Multiple Property Submission/Multiple Property Documentation Format''.
■ b. Remove and reserve paragraph (h);
■ c. Revise paragraph (g);
■ d. In paragraph (j), revise the second sentence;
■ e. Revise paragraphs (n), (o), (r), (s), and (v);
■ f. In paragraph (w), revise the first sentence; and
■ g. Remove and reserve paragraph (y).
The revisions to read as follows:

§ 60.6 Nominations by the State Historic Preservation Officer under approved State Historic Preservation Programs.

* * * * *

(g) Upon notification, any owner or owners of a private property proposed to be nominated for listing who wish to object shall submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of private property proposed for listing and objects to the listing. With respect to historic districts, owners may object regardless of whether the owner's individual property contributes to the significance of the district. For nominations with more than one owner of a property, the property will not be listed if either a majority of the owners object to listing; or the owners of a majority of the land area of the property object to listing. Upon receipt of notarized objections respecting a property with multiple owners, it is the responsibility of the State Historic Preservation Officer to ascertain whether a majority of owners, or owners of a majority of the land area, have objected. If an owner whose name did not appear on the list of owners certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property, such owner should be counted by the State Historic Preservation Officer in determining whether a majority of owners, or owners of a majority of the land area, have objected. If the State Historic Preservation Officer receives other information that would call into question the accuracy of the owner or objector count, the State Historic Preservation Officer shall exercise due diligence to determine whether a majority of owners, or owners of a majority of the land area, have objected.

* * * * *

(j) * * * The State Review Board shall review the nomination forms or documentation proposed for submission and any comments concerning the property's significance and eligibility for the National Register. * * *

* * * * *

(n) If the owner of a private property has objected or, for a district or single property with multiple owners, the majority of owners or the owners of a majority of the land area have objected, to the nomination prior to the submittal of a nomination, the State Historic Preservation Officer shall submit the nomination to the Keeper only for a determination of eligibility pursuant to paragraph (s) of this section.

(o) The State Historic Preservation Officer signs Section 3 of the nomination form if in his or her opinion the property meets the National Register criteria for evaluation. The State Historic Preservation Officer's signature in Section 3 certifies that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient; and

(4) In the opinion of the State Historic Preservation Officer, the property meets the National Register criteria for evaluation, The State Historic Preservation Officer must identify the applicable criteria and indicate the property's level of significance.

* * * * *

(r) Nominations will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves a nomination, an appeal is filed, or the owner of private property (or the majority of such owners, or the owners of a majority of the land area, for a district or single property with multiple owners) objects by notarized statements received by the

Keeper prior to listing. Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

(s) If the owner of private property (or the majority of such owners, or the owners of a majority of the land area for a district or single property with multiple owners) has objected to the nomination by notarized statement prior to listing, the Keeper shall review the nomination and make a determination of eligibility within 45 days of receipt, unless an appeal is filed. The Keeper shall list such properties determined eligible in the National Register upon receipt of notarized statements from the owner(s) of private property that constituted the objection that the owner(s) no longer object to listing.

* * * * *

(v) In the case of nominations where the owner of private property (or the majority of such owners, or the owners of a majority of the land area for a district or single property with multiple owners) has objected and the Keeper has determined the nomination eligible for the National Register, the State Historic Preservation Officer shall notify the appropriate chief elected local official and the owner(s) of such property of this determination. The general notice may be used for properties with more than 50 owners as described in § 60.6(d) or the State Historic Preservation Officer may notify the owners individually.

(w) If subsequent to nomination a State makes major revisions to a nomination or re-nominates a property returned by the Keeper, the State Historic Preservation Officer shall notify the affected property owner(s) and the chief elected local official of the revisions or re-nomination in the same manner as the original notification for the nomination, but need not resubmit the nomination to the State Review Board. * * *

* * * * *

■ 9. Amend § 60.9 by revising paragraphs (c) through (j) to read as follows:

§ 60.9 Nominations by Federal agencies.

* * * * *

(c) Completed nominations are submitted to the appropriate State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property and its eligibility for the National Register. Within 45 days of receiving the completed nomination, the State Historic Preservation Officer shall make a recommendation regarding the nomination to the appropriate Federal Preservation Officer. The State Historic Preservation Officer signs Section 3 of the nomination form with his/her recommendation. Failure to meet the 45-day deadline shall constitute a recommendation to not support the nomination.

(d) At the same time completed nominations are submitted to the appropriate State Historic Preservation Officer under paragraph (c) of this section, the chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located are notified by the Federal Preservation Officer and given 45 days in which to comment.

(e) After receiving the comments of the State Historic Preservation Officer and chief elected local officials, or if there has been no response within 45 days, the Federal Preservation Officer may approve the nomination if in his or her opinion the property meets the National Register criteria for evaluation and forward it to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, DC 20240. Prior to forwarding the nomination to the Keeper, the Federal Preservation Officer signs Section 3 of the nomination form certifying that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient; and

(4) In the opinion of the Federal Preservation Officer, the property meets the National Register criteria for evaluation.

(f) When a Federal Preservation Officer submits a nomination form for a property that he or she does not believe meets the National Register criteria for evaluation, the Federal Preservation Officer signs a continuation sheet Form NPS 10–900a explaining his/her opinions on the eligibility of the property and certifying that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented; and

(3) The nomination form is technically and professionally correct and sufficient.

(g) The comments of the State Historic Preservation Officer and chief local official are appended to the nomination, or, if there are no comments from the State Historic Preservation Officer, an explanation is attached. Concurrent nominations (see § 60.10) cannot be submitted, however, until the nomination has been considered by the State in accord with § . 60.6, supra. Comments received by the State concerning concurrent nominations and notarized statements of objection must be submitted with the nomination.

(h) Notice will be provided in the **Federal Register** that the nominated property is being considered for listing in the National Register of Historic Places in accord with § 60.13.

(i) Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

(j) Any person or organization which supports or opposes the nomination of a property by a Federal Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petition received by the Keeper prior to the listing of a property in the National Register or a determination of its eligibility where the private owner(s) object to listing will be considered by the Keeper and the nomination will be substantively reviewed.

■ 10. In § 60.10, revise paragraphs (a) and (d) to read as follows:

§ 60.10 Concurrent State and Federal nominations.

(a) State Historic Preservation Officers and Federal Preservation Officers are encouraged to cooperate in locating, inventorying, evaluating, and nominating all properties possessing historical, architectural, archeological, or cultural value. Federal agencies may nominate properties where a portion of the property is not under their jurisdiction or control. All Federal nominations, including concurrent State and Federal nominations, must satisfy the procedural requirements in § 60.9, including:

(1) Providing the appropriate State Historic Preservation Officer with notice of the proposed nomination and 45-days in which to respond;

(2) Providing the chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located notice of the

proposed nomination and 45 days in which to comment; and

(3) Certifying that all procedural requirements have been met, the nomination form is adequately documented, and the nomination form is technically and professionally correct and sufficient.

* * * * *

(d) If the owner of any privately owned property (or a majority of the owners, or the owners of a majority of the land area for a district or single property with multiple owners) objects to such inclusion by notarized statement(s) the Federal Historic Preservation Officer shall submit the nomination to the Keeper for review and a determination of eligibility. Comments, opinions, and notarized statements of objection shall be submitted with the nomination.

* * * * *

■ 11. Revise § 60.12 to read as follows:

§ 60.12 Nomination appeals.

(a) *Appeal Procedures for Nominations by State Historic Preservation Officers.* (1) Any person or local government may appeal to the Keeper the failure or refusal of a State Historic Preservation Officer to nominate a property that the person or local government considers to meet the National Register criteria for evaluation upon decision of a State Historic Preservation Officer to not nominate a property for any reason when requested pursuant to § 60.11, or upon failure of a State Historic Preservation Officer to nominate a property recommended by the State Review Board. (This action differs from the procedure for appeals during the review of a nomination by the National Park Service where an individual or organization may ''petition the Keeper during the nomination process,'' as specified in § 60.6(t). Upon receipt of such petition the normal 45–day review period will be extended for 30 days beyond the date of the petition to allow the petitioner to provide additional documentation for review.)

(2) Such appeal shall include a copy of the nomination form and documentation previously submitted to the State Historic Preservation Officer, an explanation of why the applicant is submitting the appeal in accord with this section and shall include pertinent correspondence from the State Historic Preservation Officer.

(3) The Keeper will respond to the appellant and the State Historic Preservation Officer with a written explanation either denying or sustaining the appeal within 60 days of receipt. Upon the request of the State Historic Preservation Officer, the Keeper may extend this period for an additional 30 days. If the appeal is sustained, the Keeper will:

(i) Request the State Historic Preservation Officer to submit the nomination to the Keeper within 15 days if the nomination has completed the procedural requirements for nomination as described in § 60.6 except that concurrence of the State Review Board or State Historic Preservation Officer is not required; or

(ii) If the nomination has not completed these procedural requirements, request the State Historic Preservation Officer to promptly process the nomination pursuant to § 60.6 and submit the nomination to the Keeper without delay.

(4) State Historic Preservation Officers shall process and submit such nominations if so requested by the Keeper pursuant to this section. The Secretary reserves the right to list properties in the National Register or determine properties eligible for such listing on his/her own motion when necessary to assist in the preservation of historic resources and after notifying the owner and appropriate parties and allowing for a 30-day comment period.

(5) No person shall be considered to have exhausted administrative remedies with respect to failure to nominate a property to the National Register until he or she has complied with procedures set forth in this section. The decision of the Keeper is the final administrative action on such appeals.

(b) *Appeal Procedures for Nominations by Federal Preservation Officers.* (1) Any person or local government may appeal to the Keeper the failure of a Federal Preservation Officer to nominate any property under the jurisdiction or control of a Federal agency for inclusion in the National Register in accordance with 54 U.S.C. 302104(c). (This action differs from the procedure for appeals during the Keeper's review of a nomination where an individual or organization may ''petition the Keeper during the nomination process,'' as specified in § 60.9(j). Upon receipt of such petition the normal 45-day review period will be extended for 30 days beyond the date of the petition to allow the petitioner to provide additional documentation for review.) The Keeper of the National Register shall only have jurisdiction to hear appeals if the following criteria are satisfied:

(i) A completed nomination has been sent to the State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property, and its eligibility for the National Register;

(ii) The State Historic Preservation Officer has been given 45 days to make a recommendation regarding the nomination to the Federal Preservation Officer;

(iii) The chief elected officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located have been notified and given 45 days in which to comment;

(iv) The Federal Preservation Officer has forwarded the nomination to the Keeper of the National Register of Historic Places after determining that all procedural requirements have been met, including those in paragraphs (b)(i) through (iii) of this section; the nomination is adequately documented; the nomination is technically and professionally correct and sufficient;

(v) Notice has been provided in the **Federal Register** that the nominated property is being considered for listing in the National Register that includes any comments and the recommendation of the State Historic Preservation Officer and a declaration whether the State Historic Preservation Officer has responded within the 45 day-period of review described in paragraph (b)(ii) of this section; and

(vi) The Keeper addresses in the **Federal Register** any comments from the State Historic Preservation Officer that do not support the nomination of the property in the National Register before the property is listed in the National Register.

(2) Such appeal shall include a copy of the nomination form and documentation previously submitted to the Federal Preservation Officer, an explanation of why the applicant is submitting the appeal in accord with this section, and shall include all pertinent correspondence from the State Historic Preservation Officer and/or Federal Preservation Officer.

(3) The Keeper will respond to the appellant and the Federal Preservation Officer with a written explanation either denying or sustaining the appeal within 60 days of receipt. Upon request of the Federal Preservation Officer, the Keeper may extend this period for an additional 30 days.

(4) No person shall be considered to have exhausted administrative remedies with respect to failure to nominate a property to the National Register until he or she has complied with procedures set forth in this section. The decision of the Keeper is the final administrative action on such appeals.

(c) *Appeal Procedures for Concurrent State and Federal Nominations.* (1) Any person or local government may appeal to the Keeper the failure of a Federal Preservation Officer to nominate any property that is properly considered a concurrent state and federal nomination under § 60.10 for inclusion in the National Register in accordance with 54 U.S.C. 302104(c). Appeals relating to concurrent state and federal nominations are subject to the appeal procedures for nominations by Federal Preservation Officers in paragraph (b) of this section.

■ 12. In § 60.13:

■ a. Redesignate paragraphs (b) and (c) as paragraphs (c) and (d).

■ b. Add a new paragraph (b).

■ c. Revise newly re-designated paragraph (d).

The revisions and additions to read as follows:

§ 60.13 Publication in the Federal Register and other NPS notification.

* * * * *

(b) For all nominations that include property under the jurisdiction or control of a Federal agency, the NPS shall include any comments and the recommendation of the State Historic Preservation Officer with respect to the nomination and a declaration whether the State Historic Preservation Officer has responded within the 45-day period of review provided by 54 U.S.C. 302104(c)(2) (see also § 60.9(c)) in a notice published in the **Federal Register**. The NPS shall further address in the **Federal Register** any comments from the State Historic Preservation Officer that do not support the nomination of the property.

* * * * *

(d) In nominations where the owner of any privately owned property (or a majority of the owners, or the owners of a majority of the land area for a district or single property with multiple owners) has objected and the Keeper has determined the property eligible for listing in the National Register, NPS shall notify the State Historic Preservation Officer, the Federal Preservation Officer (for Federal or concurrent nominations), the person or local government where there is no approved State Historic Preservation Program, and the Advisory Council on Historic Preservation. NPS will publish notice of the determination of eligibility in the **Federal Register**.

■ 13. In § 60.14:

■ a. Revise the third sentence of paragraph (a)(1).

■ b. Revise paragraphs (b)(3)(iii) and (b)(3)(iv).

■ c. Remove paragraph (b)(3)(v).

The revisions to read as follows:

§ 60.14 Changes and revisions to properties listed in the National Register.

(a) * * * (1) * * * In the case of boundary enlargements only those owners in the newly nominated as yet unlisted area need be notified and will be counted in determining whether a majority of private owners or owners of a majority of the land area of a property of district object to listing. * * *

(b) * * *

(3) * * *

(iii) Revised maps.

(iv) Continuation sheet with up to date Sections 2, 5, 7, and 10.

* * * * *

PART 63—DETERMINATIONS OF ELIGIBILITY FOR INCLUSION IN THE NATIONAL REGISTER OF HISTORIC PLACES

■ 14. The authority citation for part 63 is revised to read as follows:

Authority: 54 U.S.C. 320102, 302103, 302105.

■ 15. In § 63.4, revise paragraphs (a) and (c) to read as follows:

§ 63.4 Other properties on which determinations of eligibility may be made by the Secretary of the Interior.

(a) The Keeper of the National Register will not make determinations of eligibility on properties nominated by Federal agencies prior to returning the nominations for such properties to the agency for technical or professional revision or because procedural requirements have not been met.

* * * * *

(c) If necessary to assist in the protection of historic resources, the Keeper, upon consultation with and request from the appropriate State Historic Preservation Officer and concerned Federal agency, if any, may determine properties to be eligible for listing in the National Register under the Criteria established in part 60 of this chapter and shall publish such determinations in the **Federal Register**. Such determinations will be made after an investigation and an onsite inspection of the property in question.

Andrea Travnicek,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019–03658 Filed 2–28–19; 8:45 am]

BILLING CODE 4310–EJ–P

POSTAL SERVICE

39 CFR Part 111

Forms of Identification

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) for clarity and consistency in the standards regarding forms of identification.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *ProductClassification@usps.gov,* with a subject line of ''Forms of Identification''. Faxed comments are not accepted.

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Karen Key at (202) 268–7492, Catherine Knox at (202) 268–5636, or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to amend the DMM in various sections for clarity and consistency in the standards regarding forms of identification.

The Postal Service is proposing to add a new section 608.10.0, *Forms of Identification.* This new section will act as the primary source for consistent standards on forms of acceptable and unacceptable identification. DMM section 608.10.0 will include subsections that: (1) Provide a table of the products and services that require forms of acceptable identification and the number of forms (primary and secondary) required, (2) provide a description of ''primary'' forms of acceptable identification and include a table of which ''primary'' forms are acceptable for each product and service, (3) provide a description of ''secondary'' forms of acceptable identification, and

(4) provide examples of forms of unacceptable identification.

Changes to the ''primary'' forms of acceptable identification will also specify that some forms of foreign identification are accepted, including for establishing Post Office Box service. The use of university identification cards for certain services is being eliminated. University identification cards are not recognized as proof of identity by other federal agencies such as the TSA, IRS, and the State Department.

The Postal Service is also proposing to amend the applicable product and service sections to point to the new section 608.10.0. This will remove inconsistent and redundant text from the DMM. This includes amending current section 507.2.1.4a to expressly require a ''primary'' form of acceptable identification under 608.10.3 when presenting Form 3575, *Mail Forwarding Change of Address Order,* at a Post Office. The filing methods for a change-of-address will be limited to presenting Form 3575 at a Post Office or using internet Change of Address (ICOA) at *https://moversguide.usps.com.* The Postal Service will also update Form 3575 to reflect this requirement.

In addition, the Postal Service will update *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) and Publication 52, *Hazardous, Restricted, and Perishable Mail,* under separate cover.

We believe the proposed revisions will ensure clarity and consistency enabling the Postal Service to provide a superb customer experience from sender to receiver.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

***Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM)**

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

8.0 USPS Signature Services

8.1 Basic Standards

8.1.1 Description

* * * USPS Signature Services are available as follows:

* * * * *

[*Revise the second sentence in the introductory text of item c to read as follows:*]

c. * * * Prior to delivery, the recipient must provide a primary form of acceptable identification under 608.10.3. * * *

* * * * *

9.0 Collect on Delivery (COD)

9.1 Basic Standards

9.1.1 Description

[*Revise the fourth sentence in 9.1.1 to read as follows:*]

* * * The recipient has the option to pay the COD charges (with a single form of payment) by cash, or a personal check or money order made payable to the mailer (accepted by the USPS employee upon the recipient's presentation of a primary form of acceptable identification under 608.10.3). * * *

* * * * *

505 Return Services

* * * * *

4.0 Parcel Return Service

* * * * *

4.2 Basic Standards

* * * * *

4.2.5 Approval

The manager, Business Mailer Support reviews each request and proceeds as follows:

[Revise the text of item a to read as follows:]

a. If the applicant meets the criteria, the manager, Business Mailer Support approves the letter of request and sends an authorization letter outlining the terms and conditions for the program. PRS permit holders must submit the authorization letter and Form 3801, *Standing Delivery Order,* to each applicable facility. A primary form of acceptable identification under 608.10.3 is required before each pickup.

* * * * *

507 Mailer Services

* * * * *

2.0 Forwarding

2.1 Change-of-Address Order

* * * * *

2.1.4 Methods of Filing

Customers may use one of the following methods to file a change-of-address with the Post Office:

[Revise the text of item a to read as follows:]

a. Present Form 3575 to any Post Office, or as otherwise directed by the Postal Service. A customer must provide a primary form of acceptable identification under 608.10.3.

* * * * *

3.0 Hold for Pickup

* * * * *

3.2 Basic Information

3.2.1 Description

[Revise the text of 3.2.1 by adding a new second sentence to read as follows:]

* * * The addressee or designee must provide a primary form of acceptable identification under 608.10.3. * * *

* * * * *

508 Recipient Services

1.0 Recipient Options

1.1 Basic Recipient Concerns

* * * * *

1.1.5 Addressee Identification

[Revise the text of 1.1.5 to read as follows:]

If a person claiming to be the addressee of certain mail is unknown to the delivery employee, the mail may be withheld pending presentation of a primary form of acceptable identification of the claimant under 608.10.3 or suitable under 508.6 for general delivery.

* * * * *

1.1.7 Priority Mail Express and Accountable Mail

The following conditions also apply to the delivery of Priority Mail Express, Registered Mail, Certified Mail, mail insured for more than $500.00, Adult Signature, or COD, as well as mail for which a return receipt is requested or

the sender has specified restricted delivery.

* * * * *

[Revise the text of item c to read as follows:]

c. A primary form of acceptable identification under 608.10.3 may be required of the recipient before delivery of the mailpiece.

* * * * *

1.1.8 Additional Delivery Standards for Restricted Delivery

[Revise the introductory text of 1.1.8 to read as follows:]

In addition to the standards described under 1.1.7, mail marked ''Restricted Delivery'' is delivered only to the addressee or to the person authorized in writing as the addressee's agent (the USPS may require a primary form of acceptable identification under 608.10.3 from the addressee (or agent) to receive the mail) and under the following conditions:

* * * * *

1.8 Commercial Mail Receiving Agencies

1.8.1 Procedures

The procedures for establishing a commercial mail receiving agency (CMRA) are as follows:

* * * * *

[Revise the text of item b to read as follows:]

b. Each CMRA must register with the Post Office responsible for delivery. Any person who establishes, owns, or manages a CMRA must provide Form 1583–A, *Application to Act as a Commercial Mail Receiving Agency,* to the postmaster (or designee) responsible for the delivery address. The CMRA owner or manager must complete all entries and sign the Form 1583–A. The CMRA owner or manager must provide a primary and secondary form of acceptable identification under 608.10.0. It must contain sufficient information to confirm that the applicant is who he or she claims to be and is traceable to the bearer. The postmaster (or designee) may retain a photocopy of the acceptable identification for verification purposes and must list and record sufficient information to identify the two types of acceptable identification on Form 1583–A (block 10). Furnishing false information on the application or refusing to give required information is reason for denying the application. When any information required on Form 1583–A changes, the CMRA owner or manager must file a revised application (write ''revised'' on the form) with the postmaster.

* * * * *

1.8.2 Delivery to CMRA

Procedures for delivery to a CMRA are as follows:

[Revise the text of item a to read as follows:]

a. Mail delivery to a CMRA requires that the CMRA owner or manager and each addressee complete and sign Form 1583, *Application for Delivery of Mail Through Agent.* Spouses may complete and sign one Form 1583. Each spouse must provide a primary and secondary form of acceptable identification under 608.10.0. If any information that is required on Form 1583 is different for either spouse it must be entered in the appropriate box. A parent or guardian may receive delivery of a minor's mail by listing the name(s) of each minor on Form 1583 (block 12). The CMRA owner or manager, authorized employee, or a notary public must witness the signature of the addressee. The addressee must complete all entries on Form 1583. The CMRA owner or manager must verify the documentation to confirm that the addressee resides or conducts business at the permanent address shown on Form 1583. The address is verified if there is no discrepancy between information on the application and the identification presented. If the information on the application does not match the identification, the applicant must substantiate to the CMRA that the applicant resides or conducts business at the address shown. A document from a governmental entity or recognized financial institution or a utility bill with the applicant's name and current permanent address may be used for such purpose. If the applicant is unable to substantiate the address, the CMRA must deny the application. Furnishing false information on the application or refusing to give required information is reason for withholding the addressee's mail from delivery to the agent and returning it to the sender. When any information required on Form 1583 changes, the addressee must file a revised application (write ''revised'' on the form) with the CMRA. The addressee must provide a primary and secondary form of acceptable identification under 608.10.0. It must contain sufficient information to confirm that the applicant is who he or she claims to be and is traceable to the bearer. The CMRA owner or manager may retain a photocopy of the identification for verification purposes. The CMRA owner or manager must list and record sufficient information to identify the primary and secondary forms of acceptable identification on Form 1583 (block 8) and write the complete CMRA delivery address used to deliver mail to the addressee on Form 1583 (block 3).

* * * * *

4.0 Post Office Box Service

* * * * *

4.2 Service

4.2.1 Application

[Revise the second sentence in the introductory text of 4.2.1 to read as follows:]

* * * When the application is presented, the applicants (including both spouses or any other individual listed except for minors) each must present two items of valid, current identification; one a primary form of acceptable identification under 608.10.3, and the other a secondary form of acceptable identification under 608.10.4 that must contain sufficient information to confirm the applicant's identity and be traceable to the bearer.

* * *

a. In all cases:

* * * * *

[Delete item a5 in its entirety.]

* * * * *

5.0 Caller Service

* * * * *

5.3 Service

5.3.1 Application

[Revise the text of 5.3.1 to read as follows:]

To reserve a caller number for future use or to apply for caller service, the applicant must complete all relevant spaces on Form 1093–C, *Application for Post Office Caller Service,* and submit it to any postal facility that provides retail service. The facility need not be the one where destination caller service is desired. An incomplete or falsified application is sufficient reason to deny or discontinue service. An application is not considered approved until the USPS verifies the applicant's identity. Primary and secondary forms of acceptable identification can be found under 608.10.

* * * * *

5.8 Accelerated Reply Mail (ARM)

* * * * *

5.8.8 Mailer Compliance

[Revise the second sentence of 5.8.8 to read as follows:]

* * * Besides completing Form 1093–C, an applicant for ARM must also complete Form 8061 and submit both

forms to the facility where ARM service is desired.

5.8.9 USPS Actions

[Revise the text of 5.8.9 to read as follows:]

ARM service is not provided until the USPS verifies the applicant's primary and secondary forms of acceptable identification under 608.10., and service availability at the requested facility, and makes scheme preparations.

* * * * *

7.0 Premium Forwarding Services

* * * * *

7.2 Premium Forwarding Service Residential

* * * * *

7.2.4 Use

Participation in PFS-Residential is subject to the following additional standards:

[Revise item a by adding a new last sentence to read as follows:]

a. * * * Customers must provide a primary and secondary form of acceptable identification under 608.10.0 with the completed Form 8176.

* * * * *

8.0 Firm Holdout

* * * * *

8.2 Obtaining and Using Service

[Revise the text of 8.2 by adding a new third sentence to read as follows:]

* * * Each employee or authorized agent is required to provide a primary form of acceptable identification under 608.10.3. * * *

* * * * *

509 Other Services

* * * * *

3.0 Money Orders

* * * * *

3.2.2 Purchase Restrictions

A postal customer may buy multiple money orders at the same time, in the same or differing amounts, subject to these restrictions:

[Revise the text of item b to read as follows:]

b. Any customer whose daily total of purchased money orders is $3,000 or more, regardless of the number of visits made by the customer to one or more postal facilities, must complete Form 8105–A, Funds Transaction Report (FTR), and show a primary form of acceptable identification under 608.10.3.

* * * * *

3.3 Cashing Money Orders

* * * * *

3.3.2 Redemption

[Revise the third sentence of 3.3.2 to read as follows:]

* * * Any customer whose daily total of cashed money orders exceeds $10,000.00, irrespective of the number of Post Offices visited to cash the money orders, must also complete Form 8105–A, Funds Transaction Report (FTR), and show a primary form of acceptable identification under 608.10.3.

3.3.3 Identification

[Revise the first sentence of 3.3.3 to read as follows:]

When presenting a money order for payment, the customer seeking payment must sign in the presence of a USPS employee; a primary form of acceptable identification under 608.10.3 can be required. * * *

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

9.0 Exchanges and Refunds

9.1 Stamp Exchanges

* * * * *

9.1.4 Purchase Error

[Revise the last sentence of 9.1.4 to read as follows:]

* * * A customer exchanging $250 or more of such stock must provide a primary form of acceptable identification under 608.10.3, and must present the stock for exchange to the postal unit from which his or her mail is delivered.

* * * * *

608 Postal Information and Resources

* * * * *

[Add new section 608.10, Forms of Identification, to read as follows:]

608.10 Forms of Identification

10.1 General

This section describes the products and services that require forms of acceptable identification, the number of forms of acceptable identification (primary and secondary), the acceptable forms of primary and secondary identification, and forms of unacceptable identification as follows:

a. Section 10.2 provides a table of the products and services that require forms of acceptable identification and the number of forms (primary and secondary) required.

b. Section 10.3 provides a description of primary forms of acceptable identification and a table of which forms are acceptable for each product and service.

c. Section 10.4 provides a description of secondary forms of acceptable identification.

d. Section 10.5 provides examples of forms of unacceptable identification.

10.2 Products and Services Requiring Forms of Acceptable Identification

Certain products and services may require forms of acceptable identification in the application process, and/or receipt of an item. When identification is required, the identification presented must be current. Exhibit 10.2 provides a list of the products and services requiring forms of identification and the number of required forms of acceptable identification (primary and secondary).

EXHIBIT 10.2—PRODUCTS AND SERVICES REQUIRING FORMS OF ACCEPTABLE IDENTIFICATION

Products/services	Primary ID	Secondary ID
Caller Service	✓	✓
Certified Mail Services	✓	
Change-of-Address (COA)	✓	
Collect on Delivery (COD)	✓	
Commercial Mail Receiving Agency (CMRA)	✓	✓
Firm Holdout	✓	
Hold For Pickup	✓	
Hold Mail	✓	
Insurance Services	✓	
Money Order	✓	

EXHIBIT 10.2—PRODUCTS AND SERVICES REQUIRING FORMS OF ACCEPTABLE IDENTIFICATION—Continued

Products/services	Primary ID	Secondary ID
Parcel Return Service	✓	
P.O. Box	✓	✓
Premium Forwarding Service	✓	✓
Priority Mail Express	✓	
Registered Mail Services	✓	
Sure Money (DineroSeguro)	✓	
USPS Signature Services	✓	

10.3 Primary Forms of Acceptable Photo Identification

This section provides a description of the acceptable primary forms of photo identification which must include a clear photograph of the individual bearer. Exhibit 10.3 provides a table of the products and services that require a valid primary form of identification and which forms are acceptable for that product or service.

a. *U.S. Government I.D.*—U.S. Government I.D. may be federal, state, or tribal issued. A customer may use a state-issued driver's license or non-driver's identification card, U.S. Armed Forces card or Uniformed Service ID card, U.S. permanent resident or other identification card issued by U.S. Citizenship and Immigration Services, U.S. certificate of citizenship or naturalization, or an identification card issued by a federally or state recognized tribal nation (tribal identification card), as acceptable forms of photo identification.

b. *Passport*—A customer may use a U.S. passport, U.S. passport card, or foreign passport as acceptable forms of photo identification.

c. *Matricula Consular (Mexico)*—A customer may use a Matricula Consular card as an acceptable form of photo identification. A Matricula Consular card is an identification card issued by the Government of Mexico through its consulate offices to Mexican nationals residing outside of Mexico.

d. *NEXUS (Canada)*—A customer may use a NEXUS card as an acceptable form of photo identification. A NEXUS card used as a form of identification for money orders must contain an identification number. NEXUS is a joint Canada Border Services Agency and U.S. Customs and Border Protection operated trusted traveler and expedited border control program.

e. *Corporate Identification*—A customer may use a corporate identification card of a corporation located and organized in good standing in the United States as an acceptable form of photo identification for certain services, as specified in Exhibit 10.3.

EXHIBIT 10.3—PRIMARY FORMS OF ACCEPTABLE PHOTO IDENTIFICATION FOR PRODUCTS AND SERVICES

Products/services	U.S. Gov't	U.S./foreign passports	Matricula Consular Mexico	NEXUS Canada	U.S. Corp.
Caller Service	✓	✓	✓	✓	✓
Certified Mail Services	✓	✓	✓	✓	
Change-of-Address (COA)	✓	✓	✓	✓	
Collect on Delivery (COD)	✓	✓	✓	✓	
CMRA	✓	✓	✓	✓	
Firm Holdout	✓	✓	✓	✓	✓
Hold For Pickup	✓	✓	✓	✓	
Hold Mail	✓	✓	✓	✓	
Insurance Services	✓	✓	✓	✓	
Money Order	✓	✓	✓	✓	
Parcel Return Service	✓	✓	✓	✓	✓
P.O. Box	✓	✓	✓	✓	
Premium Forwarding Service	✓	✓	✓	✓	
Priority Mail Express	✓	✓	✓	✓	
Registered Mail Services	✓	✓	✓	✓	
Sure Money (DineroSeguro)	✓	✓	✓	✓	
USPS Signature Services	✓	✓	✓	✓	

10.4 Secondary Forms of Acceptable Identification

As provided under 10.2, certain products and services require a secondary form of acceptable identification that is traceable to the bearer, in order to verify the validity of the address provided by the customer when applying for those products and services. A customer may use an additional valid primary form of acceptable identification to meet the secondary form of acceptable identification requirement. A customer may also use a non-photo form of acceptable identification such as: A current lease, mortgage, or deed of trust; voter or vehicle registration card; home or vehicle insurance policy; utility bill; or Form I–94, *Arrival and Departure Record.*

10.5 Forms of Unacceptable Identification

As specified under 608.10.0, acceptable forms of identification provide proof of identity and validation of an address. Social Security cards, birth certificates, credit cards or other similar items are unacceptable as

primary or secondary forms of identification.

* * * * *

Ruth B. Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2019–03712 Filed 2–28–19; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2018–0431; FRL–9990–16–Region 1]

New Hampshire: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The state of New Hampshire has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed New Hampshire's application and has determined that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

DATES: Comments must be received on or before April 1, 2019.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: Stephen Yee—yee.steve@epa.gov.*
- *Fax:* (617) 918–0197.
- *Mail:* Stephen Yee, RCRA Waste Management & UST Section, Office of Site Remediation & Restoration, EPA Region 1, 5 Post Office Square, Suite 100 (Mail Code: OSRR07–01), Boston, MA 02109–3912.
- *Hand Delivery or Courier:* Deliver your comments to: Stephen Yee, RCRA Waste Management & UST Section, Office of Site Remediation & Restoration, EPA Region 1, 5 Post Office Square, Suite 100 (Mail Code: OSRR07–01), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: Direct your comments to Docket ID Number EPA–R01–RCRA–2018–0431. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov,* or email. The federal *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*).

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov,* or in hard copy.

You can view and copy New Hampshire's application and associated publicly available materials from 9:00 a.m. to Noon and 12:30 to 3:30 p.m., Monday through Thursday, at the EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109–3912; by appointment; Tel: (617) 918–1990 or from 8:30 a.m. to 4:00 p.m. Monday through Friday at the New Hampshire Department of Environmental Services, Public Information Center, 29 Hazen Drive, Concord, NH 03301; Tel: (603) 271–2919 or 271–8876. Interested persons wanting to examine these documents should make an appointment with either the EPA Library or the NHDES Public Information Center to facilitate access to the documents.

FOR FURTHER INFORMATION CONTACT: Stephen Yee, RCRA Waste Management & UST Section, Office of Site Remediation & Restoration, EPA Region 1, 5 Post Office Square, Suite 100 (Mail Code: OSRR07–01), Boston, MA 02109–3912, Tel: (617) 918–1197; Fax: (617) 918–0197, email: *yee.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New federal requirements and prohibitions imposed by federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in New Hampshire, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this rule?

On September 10, 2018, New Hampshire submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain federal rules promulgated between July 1, 1986 and June 30, 2014 (also known as Non-HSWA, HSWA, and RCRA Clusters). EPA concludes that New Hampshire's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA

proposes to grant New Hampshire final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Sections F and G of this document.

New Hampshire has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this proposed authorization decision?

If New Hampshire is authorized for the changes described in New Hampshire's authorization application, these changes will become part of the authorized State hazardous waste program and will therefore be federally enforceable. New Hampshire will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions

This action will not impose additional requirements on the regulated community because the regulations which EPA is proposing to authorize in New Hampshire are already effective and are not changed by today's proposed action.

D. What happens if EPA receives comments that oppose this action?

If EPA receives comments on this proposed action, we will address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

E. What has New Hampshire previously been authorized for?

The State of New Hampshire initially received final authorization on December 18, 1984, effective January 3, 1985 (49 FR 49093) to implement the RCRA hazardous waste management program. EPA granted authorization for changes to New Hampshire's program on the following dates: November 14, 1994, effective January 13, 1995 (59 FR 56397); and February 27, 2006, effective March 29, 2006 (71 FR 9727).

F. What changes are we proposing with today's action?

On September 10, 2018, the State of New Hampshire submitted a final complete program revision application, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that New Hampshire's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. EPA is proposing to authorize New Hampshire for the following program changes:

New Hampshire is seeking authorization for updated state regulations addressing most federal requirements through June 30, 2014 and also for changes to New Hampshire's base program for which they had been previously authorized. Significant program revisions in this package include the Land Disposal Restrictions and hazardous waste listings. We are proposing to authorize the program changes as provided in each of the following Revision Checklists (RC):

RC 13—Definition of Solid Waste for 40 CFR 260.30—260.33 only;
RC 81—Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038);
RC 89—Revision to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038); (RC 91)—Administrative Stay for F032, F034, and F035 Listing (HSWA/Non HSWA) (Superseded by *57 FR 5859* and *57 FR 61492,* see RCs 101 and 120 in RCRA Clusters II and III, respectively);
RC 101—Administrative Stay for the Requirement That Existing Drip Pads be Impermeable (HSWA/Non HSWA) (Superseded by *57 FR 61492,* see RC 120 in RCRA Cluster III);
RC 117A—Reissuance of the ''Mixture'' and ''Derived-From'' Rules;
RC 135—Recovered Oil Exclusion;
RC 140—Carbamate Production Identification and Listing of HW;
RC 150—Amendments to the Definition of Solid Waste; Amendment II;
RC 152—Imports and Exports of HW: Implementation of OECD Council Decision;
RC 156—Military Munitions Rule: HW Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of HW on Right-of-Ways on Contiguous Properties;
RC 159—Conformance with the Carbamate Vacatur;
RC 169—Petroleum Refining Process Wastes;
RC 178—Petroleum Refining Process Wastes—Leachate Exemption;
RC 183—Land Disposal Restrictions Phase IV—Technical Corrections;
RC 187—Petroleum Refining Process Wastes—Clarification;
RC 189—Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes;
RC 192A—Mixture and Derived-From Rules Revisions;
RC 194—Mixture and Derived-From Rules Revision II;
RC 195—Inorganic Chemical Manufacturing Wastes Identification and Listing;
RC 206—Nonwastewaters from Dyes and Pigments;
RC 207—Uniform Hazardous Waste Manifest Rule;
RC 218—F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes;
RC 222—OECD Requirements; Export Shipments of Spend Lead-Acid Batteries;
RC 225—Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents—*There is no checklist for this rule because it removes provisions from the regulations.*;
RC 227—Revision of the Land Disposal Treatment Standards for Carbamate Wastes;
RC 229—Conditional Exclusions for Solvent Contaminated Wipes;

Special Consolidated Checklist for the Land Disposal Restrictions (LDRs) as of 6/30/92 includes the following checklists:

- RC 34—Land Disposal Restrictions;
- RC 39—California List Waste Restrictions;
- RC 50—Land Disposal Restrictions for First Third Scheduled Wastes;
- RC 62—Land Disposal Restrictions Amendments to First Third Scheduled Wastes;
- RC 63—Land Disposal Restrictions for Second Third Scheduled Wastes;
- RC 66—Land Disposal Restrictions; Correction to the First Third Scheduled Wastes;
- RC 78H—Land Disposal Restrictions for Third Third Scheduled Wastes;
- RC 78N—Land Disposal Restrictions for Third Third Scheduled Wastes;
- RC 83—Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments;
- RC 95—Land Disposal Restrictions for Electric Arc Furnace Dust;

- RC 102—Second Correction to the Third Third Land Disposal Restrictions;
- RC 103—Hazardous Debris Case-by-Case Capacity Variance;
- RC 106—Lead-bearing Hazardous Materials Case-by-Case Capacity Variance;

Special Consolidated Checklist for the Phases I–IV LDRs as of 12/31/02 includes the following checklists:

- RC 109—Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris;
- RC 116—Hazardous Soil Case-By-Case Capacity Variance;
- RC 117A—Reissuance of the ''Mixture'' and ''Derived-From'' Rules;
- RC 123—Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance;
- RC 124—Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated;
- RC 136—Removal of the Conditional Exemption for Certain Slag Residues;
- RC 137—Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes;
- RC 151—Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners;
- RC 155—Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance;
- RC 157—Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions;
- RC 160—Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment;
- RC 161—Emergency Revision of the Carbamate Land Disposal Restrictions;
- RC 167A—Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes;
- RC 167B—Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions;
- RC 167C—Land Disposal Restrictions Phase IV– Corrections;
- RC 170—Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment;
- RC 171—Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production;
- RC 172—Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags;
- RC 173—Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule;
- RC 178—Petroleum Refining Process Wastes—Leachate Exemption;
- RC 183—Land Disposal Restrictions Phase IV—Technical Corrections;
- RC 189—Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes;
- RC 190—Land Disposal Restrictions Phase IV—Deferral for PCBs in Soil;
- RC 195—Inorganic Chemical Manufacturing Wastes Identification and Listing;
- RC 201—Treatment Variance for Radioactively Contaminated Batteries;

Checklist for the Wood Preserving Listings as of 12/31/02 includes the following checklists:

- RC 92—Wood Preserving Listings; Technical Corrections;
- RC 120—Wood Preserving; Revisions to Listings and Technical Requirements;
- RC 162—Clarification of Standards for Hazardous Waste LDR Treatment Variances;
- RC 167F—Exclusion of Recycled Wood Preserving Wastewaters.

A detailed cross walk for each of the checklists mentioned above can be found in the administrative record for this **Federal Register** authorization.

G. Where are the revised State rules different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable.

The most significant differences between the New Hampshire rules and the federal rules are highlighted and summarized in the Table 1 below. It should be noted that this summary does not describe every difference, nor every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand their compliance responsibilities.

1. More Stringent Provisions

There are aspects of the New Hampshire program which are more stringent than the federal program. These requirements would become part of New Hampshire's authorized program and would be federal enforceable. All of these more stringent requirements are, or will become, part of the federally enforceable RCRA program when authorized by the EPA and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements are identified as MS in the Table 1 below.

2. Broader-In-Scope Provisions

There are aspects of the New Hampshire program that are broader-in-scope than the federal program. These broader-in-scope requirements do not become part of the authorized program and EPA cannot enforce them. Regulated entities must comply with these requirements in accordance with State law. These broader-in-scope requirements are identified as BIS in the Table 1 below.

3. Partially Broader-In-Scope

There are aspects of the New Hampshire program that are partially broader-in-scope than the federal program. These partially broader-in-scope requirements are the result of New Hampshire not adopting certain portions of the regulations. These partially broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. However, the parts of the regulations which are not partially broader-in-scope are part of the federally enforceable RCRA program. Regulated entities must comply with these requirements in accordance with State law. These broader-in-scope requirements are identified as Partially BIS in the Table 1 below.

4. Different but Equivalent Provisions

New Hampshire also has some regulations that differ from, but have been determined to be equivalent to, the federal regulations. These state regulations will become part of the federally enforceable RCRA program when authorized by the EPA. These different but equivalent requirements are identified as EQ in the Table 1 below.

5. There are certain federal requirements that EPA cannot delegate to the States, although New Hampshire has adopted these requirements by

reference, EPA would continue to implement those requirements. These requirements are identified in the Table 1 below.

TABLE 1

Description of checklist number and the Federal requirement	Analogous state authority [1]—(Env–Hw)
RC 117A—Reissuance of the "Mixture" and "Derived-From" Rules	
261.3(a)(2)(i)	401.01(b)(3)—NH's mixture rule regulates as characteristic wastes mixtures of hazardous wastes with materials that are not solid wastes (*e.g.*, soils) if the mixture exhibits a characteristic. (Partially BIS).
261.3(a)(2)(iv)	401.01(b)(2); 401.01(c)(2)—NH's mixture rule regulates as listed wastes mixtures of hazardous wastes with materials that are not solid wastes (*e.g.*, soils). (Partially BIS).
261.3(a)(2)(iv)(A)–(E)	NH is not adopting an analog to these provisions. (BIS).
261.3(b)(2)	401.01(b)(2); 404.02—NH's mixture rule regulates as listed wastes mixtures of hazardous wastes with materials that are not solid wastes (*e.g.*, soils). (Partially BIS).
261.3(b)(3)	401.01(b)(3)—NH's mixture rule regulates as characteristic wastes mixtures of hazardous wastes with materials that are not solid wastes (*e.g.*, soils) if the mixture exhibits a characteristic. (Partially BIS).
261.3(c)(2)(i)	401.01(c)(2), 404.03(a), 404.03(b)—NH includes precipitation run-off that exhibits a characteristic. (Partially BIS).
261.3(c)(2)(ii)(B)	401.03(b)(30)—NH has adopted the exemption for fuels produced from the refining of oil-bearing HW (now at 40 CFR 261.6(a)(3)(iii)) but has not adopted the other exemptions. (Partially BIS).
RC 135—Recovered Oil Exclusion	
261.3(c)(2)(ii)(B)	401.03(b)(30)—NH has adopted the exemption for fuels produced from the refining of oil-bearing HW (now at 40 CFR 261.6(a)(3)(iii)) but has not adopted the other exemptions. (Partially BIS).
261.6(a)(3)(v), now at 261.6(a)(3)(iv).	NH is not adopting these provisions. (BIS).
261.6(a)(3)(vi)	An analog to this provision does not currently exist in NH rules, and this provision was subsequently deleted in RC169.
RC 140—Carbamate Production Identification and Listing of HW	
261.3(a)(2)(iv)(E)–(G)	NH is not adopting these exemptions. (BIS).
RC 169—Petroleum Refining Process Wastes	
261.3(a)(2)(iv)(C)	N/A—NH is not adopting the exemption. (BIS).
261.3(c)(2)(ii)(B)	401.03(b)(30)—NH has adopted the exemption for fuels produced from the refining of oil-bearing HW (40 CFR 261.6(a)(3)(iii)) but has not adopted the other exemptions. (Partially BIS).
261.6(a)(3)(iv)(C)	NH is not adopting this provision. (BIS).
RC 192A—Mixture and Derived-From Rules Revisions	
261.3(a)(2)(iv)	401.01(b)(2); 401.01(c)(2)—NH's mixture rule regulates as listed wastes mixtures of hazardous wastes with materials that are not solid wastes (*e.g.*, soils). NH has not yet adopted RC191. (Partially BIS).
261.3(c)(2)(i)	401.01(c)(2); 404.03(a); 404.03(b)—NH includes precipitation run-off that exhibits a characteristic. NH has not yet adopted RC191. (Partially BIS).
261.3(h)(1)–(3)	NH has not yet adopted RC191. (BIS).
RC 194—Mixture and Derived-From Rules Revision II	
261.3(a)(2)(iv)	401.01(b)(2), 401.01(c)(2)—NH's mixture rule regulates as listed wastes mixtures of hazardous wastes with materials that are not solid wastes (*e.g.*,, soils). NH has not yet adopted CL191. (Partially BIS).
261.3(a)(2)(iv)(A)–(G)	NH is not adopting these exemptions. (BIS).
RC 207—Uniform Hazardous Waste Manifest Rule	
262.27(a)	510.01(e)—NH requires generators of ≥100 kgs./month to certify. (MS).
262.27(b)	510.01(f)—NH requires generators of <100 kgs./month to certify. (MS).
262.34(m)	511.02(b)(3); 507.03(a) and (b)—NH does not allow accumulation as provided in 40 CFR 262.34(d)–(f). (MS).
RC 229—Conditional Exclusions for Solvent Contaminated Wipes	
260.10 "Solvent-contaminated wipe".	401.02(d) and (e)—Used oil is a listed waste in NH. NH's definition allows wipes to contain used oil. (EQ) Wipes used to clean up solvent spills of 12 fluid ounces or more are not eligible for the exemption. (BIS).
261.4(a)(26)(i)	401.03(g)(3)–(7)—NH has added a clarifying requirement at (g)(1) that excess spent solvent can't be added to wipes to avoid disposal. (EQ).
261.4(b)(18)(i)	401.03(g)(3)–(7)—NH has added a clarifying requirement at (g)(1) that excess spent solvent can't be added to wipes to avoid disposal. (EQ).
261.4(b)(18)(vi)(A)	401.03(b)(28)c.3—NH prohibits disposal in NH MSW landfills. (BIS).

TABLE 1—Continued

Description of checklist number and the Federal requirement	Analogous state authority [1]—(Env–Hw)
Special Consolidated Checklist for the Land Disposal Restrictions as of June 30, 1992	
261.5(b)—(RC 34)	503.01, 508, 1201.03(b)—NH has not adopted the very small quantity generator (VSQG) exclusion but does exempt VSQGs from LDR requirements. (MS).
261.5(f)(2); 261.5(g)(2)—(RC 34).	503.01, 508—NH has not adopted the VSQG exclusion. (MS).
262.34(d)(4)—(RC 83)	507.03(a)—NH rules allow generators of between 100 and 1000 kgs./month to accumulate up to 90 days rather than 180. (MS).
263.12—(RC 34)	104.63; 304.11; 601.01(b)(2) and (3); 701.01(a)—NH requires a permit for transfer facilities. (MS).
268.1(c)(3)—(RCs 34, 39, 50, 66, 78); 268.1(c)(3)(i)–(ii)—(RC 78).	1202.02(b)(1)—NH prohibits underground injection of HW. (MS)
268.3(b)—(RCs 78, 102)	1202.02(f), NH has not adopted an analog to this provision. (MS).
268.5(a)–(i)—(RC 34)	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 102.02(b)(1); 1202.02(a)(1).
268.6(a)–(n)—(RC 34)	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 1202.02(a)(1).
268.7(a)(10)—(RCs 78, 83)	509.05; 1202.02(i)—NH has not adopted an analog to this provision. (MS).
268.42(b)—(RCs 34, 39, 78)	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 1202.02(a)(1).
268.44(a)–(g)—(RC 34)	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 102.02(b)(1); 1202.02(a)(1).
Special Consolidated Checklist for the Phases I–IV Land Disposal Restrictions as of December 31, 2002	
262.34(d)(4)—(RC 179)	507.03(a)—NH rules allow generators of between 100 and 1000 kgs./month to accumulate up to 90 days rather than 180 (MS).
264.1(g)(6)—(RCs 124, 137)	404.01; 701.02(a)(4)—NH rules do not include language specifically allowing dilution of D001 and D003 wastes in ENUs and WWTUs. (MS).
265.1(c)(10)—(RCs 124, 137).	404.01, 701.02(a)(4)—NH rules do not include language specifically allowing dilution of D001 and D003 wastes in ENUs and WWTUs. (MS).
268.1(c)(3)(i)–(ii)—(RC 151)	1202.02(b)(1)—NH prohibits underground injection of HW. (MS).
268.3(b)—(RC 151)	1202.02(f)—NH has not adopted an analog to this provision. (MS).
268.5(h)(2)(ii)–(vi)—(RC 109)	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 102.02(b)(1); 1202.02(a)(1).
268.7(a)(7)—(RCs 137, 157, 167C).	509.05; 1202.01 incorporates 40 CFR 268 by reference; 1202.02(b)(2)—NH prohibits underground injection of HW. (MS).
268.42(b)—(RC 109)	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 1202.02(a)(1).
268.44(a)(1)–(2)—(RC 162)	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 102.02(b)(1); 1202.02(a)(1).
Special Consolidated Checklist for the Wood Preserving Listings as of December 31, 2002	
262.34(a)(1)(i)—(RC 92)	507.01(a)—(EQ); 507.02(a)—(EQ); 509.02(a)(6)—(EQ); 507.02(b)–(f)—NH requires storage on impervious surfaces; secondary containment if wastes with free liquids are stored near floor drains, manholes, or sinks; and for containers stored outside, protection from precipitation, secondary containment, and setbacks from wells and storm drains (MS); 509.03(b), (e), (g) and (i)—For satellite storage NH requires: Training, appropriate management of incompatible wastes, and inspections. (MS).
262.34(a)(1)(ii)—(RC 92)	507.01(a); 507.02(a)—(EQ); 507.03(a)—(EQ); 509.02(a)(7)—(EQ); 508.03(d)—NH requires federal VSQGs that accumulate ≥100 kg of HW in tanks to comply with portions of Subpart J. (MS).

[1] State of New Hampshire's Hazardous Waste Rules, effective August 14, 2017.

H. Who handles permits after the final authorization takes effect?

When the final authorization takes effect, New Hampshire will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer and enforce any RCRA and HSWA (Hazardous and Solid Waste Act) permits or portions of permits that it has issued in New Hampshire prior to the effective date of this authorization until the State incorporates the terms and conditions of the federal permits into the State RCRA permits. EPA will not issue any new permits, or new portions of permits, for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for any HSWA requirements for which New Hampshire is not yet authorized. EPA has the authority to enforce state-issued permits after the State is authorized.

I. What is codification and is EPA codifying New Hampshire's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding these citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the

authorization of New Hampshire's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart EE for this authorization of New Hampshire's program changes at a later date.

J. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of New Hampshire's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: January 29, 2019.

Deborah A. Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2019–03590 Filed 2–28–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 84, No. 41

Friday, March 1, 2019

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

Agriculture Marketing Service

[DOC. NO. AMS–FGIS–19–0003]

Notice of Continued Suspension of Supervision Fee Assessment Under the United States Grain Standards Act (USGSA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA), Agricultural Marketing Service (AMS) has determined the suspension of the assessment of fees for supervision of official inspection and weighing services performed by delegated States and/or designated agencies under the United States Grain Standards Act (USGSA) will continue through December 31, 2020.

DATES: This notice is applicable beginning July 1, 2019, and remains applicable for 18 months.

FOR FURTHER INFORMATION CONTACT: Denise Ruggles, FGIS Executive Program Analyst, USDA AMS; Telephone: (816) 659–8406; Email: *Denise.M.Ruggles@usda.gov.*

SUPPLEMENTARY INFORMATION: The Agriculture Reauthorizations Act of 2015, Public Law 114–54, amended the USGSA (7 U.S.C. 71–87k) to require AMS to adjust fees for the supervision of official grain inspection and weighing in order to maintain an operating reserve of not less than 3 and not more than 6 months (7 U.S.C. 79(j)(4)). The Agricultural Marketing Service (AMS) published a notification of the suspension of supervision fee assessment on May 24, 2018, which became effective on July 1, 2018 (83 FR 24081). The suspension of the supervision fee assessment expires on June 30, 2019.

In order to maintain an operating reserve not less than 3 and not more than 6 months, AMS reviewed the operating reserve at the end of fiscal year 2018. The operating reserve at the end of fiscal year 2018 was $5,084,246, which continues to exceed 6 months by a significant margin. Accordingly, AMS is issuing this notice to announce the suspension of the fee for supervision of official inspection and weighing services of domestic grain and land carriers to Canada and Mexico performed by delegated States and/or designated agencies. According to the regulations under the USGSA, AMS may suspend any provision of the regulations in emergencies or other circumstances, which would not impair the objectives of the USGSA (7 CFR 800.2). AMS has determined that suspending supervision fees will not impair the objectives of the USGSA because the operating reserve for supervision services is sufficient to maintain the service without additional funds.

AMS will continue the suspension of the assessment fee of $0.011 per metric ton on domestic shipments officially inspected and/or weighed, including land carrier shipments to Canada and Mexico, performed by delegated States and/or designated agencies on or after July 1, 2019 (7 CFR 800.71 Schedule B). These fees will remain suspended for 18 months, at which time AMS will reassess the operating reserve for supervision of official agency inspection and weighing.

The realignment of offices within the U.S. Department of Agriculture authorized by the Secretary's Memorandum dated November 14, 2017, eliminates the Grain Inspection, Packers and Stockyards Administration (GIPSA) as a standalone agency. The grain inspection activities formerly part of GIPSA are now organized under AMS.

Authority: 7 U.S.C. 71–87k.

Dated: February 25, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–03597 Filed 2–28–19; 8:45 am]

BILLING CODE 3410–02–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meetings

DATE AND TIME: Wednesday, March 6, 2019, 11:00 a.m. ET.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW, Washington, DC 20237.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The U.S. Agency for Global Media's (USAGM) Board of Governors (Board) will be meeting at the time and location listed above. The Board will vote on a consent agenda consisting of the minutes of its November 14, 2018 meeting, a resolution honoring the 25th anniversary of Radio Free Europe/Radio Liberty's Balkan Service, and USAGM Smith-Mundt Guidelines. The Board will receive a report from the USAGM's Chief Executive Officer and Director.

This meeting will be available for public observation via streamed webcast, both live and on-demand, on the agency's public website at *www.usagm.gov.* Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the agency's public website.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Members of the public seeking to attend the meeting in person must register at *https://bbgboardmeeting march2019.eventbrite.com* by 12:00 p.m. (ET) on March 5. For more information, please contact USAGM Public Affairs at (202) 203–4400 or by email at *pubaff@usagm.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Oanh Tran at (202) 203–4545.

Oanh Tran,

Managing Director.

[FR Doc. 2019–03823 Filed 2–27–19; 4:15 pm]

BILLING CODE 8610–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Tuesday, March 5, 2019, at 1:00 p.m. EST the purpose of the meeting is to continue discussing details for a 2019 briefing on voting rights.

DATES: The meeting will be held on Tuesday, March 5, 2019, at 1:00 p.m. EST. Public Call Information: Dial: 1–877–260–1479; Conference ID: 6276422.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, DFO, at *afortes@usccr.gov* or 213–894–3437.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above toll-free call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Michigan Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Office at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes December, 14, 2018 Meeting
III. Planning Discussion
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: February 26, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–03703 Filed 2–28–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of web conference meeting announcing findings and recommendations from Texas Advisory Committee study on voting rights.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Texas Advisory Committee (Committee) will hold meetings via web conference on Wednesday, April 3, 2019 and Thursday, April 18, 2019 both at 1:00 p.m. Central Time.

The Texas Advisory Committee to the U.S. Commission on Civil Rights will host two webinars sharing findings, documented in a recent *Advisory Memorandum* that was featured in the *Commission's 2018 Statutory Enforcement Report* on voting rights in the U.S., focused on the experience of voters in the areas of voter registration, access to and administration of polling locations, and language access. The Committee will also share recommendations intended for federal, state, and local agencies and will answer questions from the community. The April 3 webinar will focus on voter registration and the April 18 webinar will focus on access to and administration of polling locations, and language access.

DATES: These webinars will be held on Wednesday, April 3, 2019 and Thursday, April 18, 2019 at 1:00 p.m. Central Time.

Public Call Information: (audio only) Dial: 877–260–1479, Conference ID: 7824146.

Web Access Information: (visual only). The online portion of the meeting may be accessed through the following link:

April 3 registration: *https://cc.readytalk.com/r/9np2s763vrrw&eom.*

April 18 registration: *https://cc.readytalk.com/r/w1w9f59y72sl&eom.*

To participate, please access webinar *and* call into conference line.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll-free number (audio only) and web access link (visual only). Please use both the call-in number and the web access link in order to follow the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

Please click on the ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Presentation
III. Q and A
IV. Adjournment

Dated: February 25, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–03622 Filed 2–28–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Pennsylvania Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (EST) on Tuesday, March 19, 2019. The purpose of the meeting is to announce the topic members selected as the Committee's civil rights project and to discuss and vote on the civil rights project proposal that will be submitted to the staff director.

DATES: Tuesday, March 19, 2019, at 11:30 a.m. (EDT).

Public Call-In Information: Conference call-in number: 800–949–2175 and conference call ID number: 8426059.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 800–949–2175 and conference call ID number: 8426059. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 800–949–2175 and conference call ID number: 8426059.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments. The statements must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may phone the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjZAAQ;* click the ''Meeting Details'' and ''Documents'' links. 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 Tuesday, March 19, 2019

I. Rollcall
II. Welcome
III. Project Planning
  —Announce Topic Members Selected for Its Civil Rights Project
  —Discuss and Vote on Project Proposal
IV. Other Business
V. Next Meeting
VI. Public Comments
VII. Adjourn

Dated: February 26, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–03685 Filed 2–28–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–09–2019]

Proposed Foreign-Trade Zone—Jefferson County, Colorado; Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Jefferson County Economic Development Corporation, to establish a foreign-trade zone in the Jefferson County, Colorado area, adjacent to the U.S. Customs and Border Protection (CBP) user fee airport at the Rocky Mountain Metropolitan Airport, under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new ''subzones'' or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone project. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on February 25, 2019. The applicant is authorized to make the proposal under Title 7, Article 49.5 of the Colorado Revised Statutes.

The applicant's proposed service area under the ASF would be Boulder, Clear Creek, Gilpin and Jefferson Counties, Colorado. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is within and adjacent to the Rocky Mountain Metropolitan Airport CBP user fee airport.

The application indicates a need for zone services in the Jefferson County, Colorado area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. The application is not requesting any magnet sites or subzones/usage-driven sites at this time. Specific production approvals are not being sought at this time. Such requests would be made to the FTZ Board on a case-by-case basis.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is April 30, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 15, 2019.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: February 25, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–03683 Filed 2–28–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–076]

Certain Plastic Decorative Ribbon From the People's Republic of China: Corrected Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2019, the Department of Commerce (Commerce) published in the **Federal Register** the final determination of the countervailing duty (CVD) investigation on certain plastic decorative ribbon (plastic ribbon) from the People's Republic of China (China). Commerce is now amending the Issues and Decision Memorandum (IDM) referred to in the final determination **Federal Register** notice to correct the inadvertent omission of certain pages in the IDM.

DATES: Applicable March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Charlotte Baskin-Gerwitz, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880.

SUPPLEMENTARY INFORMATION: On December 21, 2018, Commerce placed on the record of this investigation an Issues and Decision Memorandum addressing all comments received in this proceeding and the companion antidumping proceeding addressing the issues raised by parties for the final determination.[1] Commerce committed a ministerial error within the meaning of 19 CFR 351.224(f). Specifically, in preparing the final determination, and despite being contemporaneously drafted, Commerce inadvertently omitted approximately four pages from the Issues and Decision Memorandum, including the final sentence of Commerce's position on issue 13 and the discussion of issues 14 and 15 in their entirety. Commerce is now placing on the record a corrected version of the Issues and Decision Memorandum, including the missing pages, dated February 19, 2019, which is incorporated by, and hereby adopted by, this notice.

Scope of the Investigation

The merchandise covered by this investigation is certain plastic decorative ribbon, having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches, but disregarding any features that measure 4 inches or less in width, such as tapering or cutting at the ends or in a bow knot, provided that aggregate length of such features comprises no more than 20% of the length of the ribbon. Subject merchandise includes but is not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products. Unless the context otherwise clearly indicates, the word ''ribbon'' used in the singular includes the plural and the plural ''ribbons'' includes the singular.

The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

The ribbons subject to this investigation may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including without limitation, those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed (or that otherwise have impressed designs, images, words or patterns), and ribbons with holographic, metallic, glitter or iridescent finishes.

Subject merchandise includes ''pull-bows'' an assemblage of ribbons connected to one another, folded flat, and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage, and ''pre-notched'' bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. The ribbons are covered by the scope of this investigation; the ''other products'' (*i.e.,* the other, non-subject merchandise included in the ensemble) are not covered by the scope of this investigation.

Excluded from the scope of this investigation are the following: (1) Ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal

[1] Filed on ACCESS as barcode 3785477–01. The corresponding **Federal Register** Notice was published on February 1, 2019. *Certain Plastic Decorative Ribbon from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 84 FR 1064 (February 1, 2019) (*Final CVD Determination*).

edges of the ribbon; (3) ribbons with an adhesive coating covering the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) An outer layer that is either flocked, made of fabric, or covered by any other decorative coating such as glitter (whether of plastic or non-plastic materials), and (b) a flexible metal wire at the base which permits attachment to an object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and return to their original dimension when the stretching load is removed; (6) ribbons affixed as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non subject merchandise; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; (9) cords, *i.e.,* multiple strands of materials that have been braided, gimped or twisted together; and (10) ribbons in the form of bows having a diameter of less than seven-eighths (7/8) of an inch, or having a diameter of more than 16 inches, based on actual measurement. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.

The scope of the investigation excludes shredded plastic film or shredded plastic strip, in each case where the shred does not exceed 5 mm in width and does not exceed 18 inches in length.

The scope of the investigation excludes plastic garlands and plastic tinsel garlands, imported in lengths of not less than three (3) feet. The longitudinal base of these garlands may be made of wire or non-wire material, and these garlands may include plastic die-cut pieces. Also excluded are items made of plastic garland and/or plastic tinsel where the items do not have a tab or other means for attaching the item to an object using adhesives. This exclusion does not apply to plastic garland bows, plastic tinsel bows, or other bow-like products made of plastic garland or plastic tinsel.

The scope of the investigation excludes ribbons made exclusively of fabric formed by weaving or knitting threads together, or by matting, condensing or pressing fibers together to create felt fabric, regardless of thread or fiber composition, including without limitation, fabric ribbons of polyester, nylon, acrylic or terylene threads or fibers. This exclusion does not apply to plastic ribbons that are flocked.

The scope of the investigation excludes ribbons having a width of less than three (3) mm when incorporated by weaving into mesh material (whether flat or tubular) or fabric ribbon (meaning ribbon formed by weaving all or any of the following: man-made fibers, natural fibers, metal threads and/or metalized yarns), in each case only where the mesh material or fabric ribbon is imported in the form of a decorative bow or a decorative bow-like item.

Further, excluded from the scope of the antidumping duty investigation are any products covered by the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the People's Republic of China (China). *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3920.20.0015 and 3926.40.0010. Merchandise covered by this investigation also may enter under subheadings 3920.10.0000; 3920.20.0055; 3920.30.0000; 3920.43.5000; 3920.49.0000; 3920.62.0050; 3920.62.0090; 3920.69.0000; 3921.90.1100; 3921.90.1500; 3921.90.1910; 3921.90.1950; 3921.90.4010; 3921.90.4090; 3926.90.9996; 5404.90.0000; 9505.90.4000; 4601.99.9000; 4602.90.0000; 5609.00.3000; 5609.00.4000; and 6307.90.9889. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Suspension of Liquidation

Suspension of liquidation and cash deposit rates for all producers and exporters of plastic ribbon from China are unaffected by this amended final determination. Refer to the *Final CVD Determination* for the suspension instructions in effect at the time of the issuance of this notice.[2]

Public Comment

Commerce is not accepting comments in response to this corrected final determination.

International Trade Commission Notification

In accordance with section 705(d) of the Tariff Act of 1930, as amended (Act), Commerce will notify the International Trade Commission (ITC) of its amended final determination.

Notification to Interested Parties

This corrected final determination is issued and published pursuant to sections 705(d) and 777(i)(1) of the Act.

Dated: February 26, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–03681 Filed 2–28–19; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Final CVD Determination,* 84 FR at 1065.

DEPARTMENT OF COMMERCE

International Trade Administration

President's Advisory Council on Doing Business in Africa; Correction

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The International Trade Administration, Department of Commerce published a document in the **Federal Register** of February 25, 2019, concerning the notice of an opportunity to apply for membership on the President's Advisory Council on Doing Business in Africa. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Ashley Bubna, 202–482–5205.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 25, 2019, in FR Doc. 2019–03171, on page 5988, in the first column, correct the **DATES** caption to read:

DATES: All applications for immediate consideration for appointment must be received by the Office of Africa by 5:00 p.m. Eastern Daylight Time (EDT) on March 25, 2019.

On page 5989, in the first column, fourth paragraph under **SUPPLEMENTARY INFORMATION** correct the caption to read: To be considered for membership, submit the following information by 5:00 p.m. EDT on March 25, 2019 to the email or mailing address listed in the **ADDRESSES** section.

Anthony Diaz,

Program Analyst.

[FR Doc. 2019–03612 Filed 2–28–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

Sodium Hexametaphosphate From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty order on sodium hexametaphosphate (SHMP) from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the antidumping duty order.

DATES: Applicable March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Christian Llinas, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4877.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 2008, Commerce published in the **Federal Register** the antidumping order on SHMP from China.[1] On June 1, 2018, Commerce published the notice of initiation of the second sunset review of the antidumping duty order on SHMP from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On June 8, 2018, Commerce received a notice of intent to participate from ICL Specialty Products, Inc. and Innophos, Inc. (collectively, the petitioners) as domestic interested parties.[3] On July 2, 2018, we received a complete substantive response from the domestic interested parties.[4] We received no substantive responses from respondent interested parties with respect to the order covered by this sunset review, nor was a hearing requested. Pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this order.

As a result of its review, Commerce determined pursuant to section 751(c)(1) and 752(c) of the Act, that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping.[5] Commerce, therefore, notified the ITC of the magnitude of the dumping margins likely to prevail should the antidumping duty order be revoked. On December 12, 2018, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on SHMP from China would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6]

Scope of the Order

The merchandise subject to the order is sodium hexametaphosphate. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum at 2.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the antidumping duty order on SHMP from China. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the antidumping order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next sunset review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and this notice are in accordance with section 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: February 25, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–03682 Filed 2–28–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *Notice of Antidumping Duty Order: Sodium Hexametaphosphate from the People's Republic of China,* 73 FR 14772 (March 19, 2008).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 25436 (June 1, 2018).

[3] *See* the petitioners' Letter, ''Sodium Hexametaphosphate from China: Notice of Intent to Participate,'' (June 8, 2018).

[4] *See* the petitioners' Letter, ''Sodium Hexametaphosphate (SHMP) from China: Substantive Response to Notice of Initiation of Five-Year (Sunset) Review of the Antidumping Duty Order,'' (July 2, 2018).

[5] *See Sodium Hexametaphosphate from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 83 FR 50338 (October 5, 2018) (*Final Results*) and accompanying Issues and Decision Memorandum.

[6] *See Sodium Hexametaphosphate from China: Second Review Investigation No. 731–TA–1110,* 83 FR 63905 (December 12, 2018).

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of

Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–928	731–TA–1140	China	Uncovered Innerspring Units (2nd Review)	Matthew Renkey, (202) 482–2312.
A–791–821	731–TA–1141	South Africa	Uncovered Innerspring Units (2nd Review)	Matthew Renkey, (202) 482–2312.
A–552–803	731–TA–1142	Vietnam	Uncovered Innerspring Units (2nd Review)	Matthew Renkey, (202) 482–2312.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerces's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the Commission's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: February 12, 2019.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–02587 Filed 2–28–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG644

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the O'Connell Bridge Lightering Float Pile Replacement Project in Sitka, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from City and Borough of Sitka (CBS) for authorization to take marine mammals incidental to the O'Connell Bridge Lightering Float Pile Replacement Project in Sitka, Alaska. 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 is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 1, 2019.

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/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* 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, and (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/incidentalconstruction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable [adverse] impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

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 November 18, 2018, NMFS received a request from CBS for an IHA to take marine mammals incidental to pile driving and removal activities associated with the O'Connell Bridge Lightering Float Pile Replacement Project in Sitka, Alaska. The application was deemed adequate and complete on December 20, 2018. CBS's request is for take of small numbers of humpback whale (*Megaptera novaeangliae*), killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), harbor seal

(*Phoca vitulina*), and Steller sea lion (*Eumetopias jubatus*) by Level B harassment only. Neither CBS nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

CBS is repairing the O'Connell Bridge Lightering Float (float) located in Sitka Sound in Southeast Alaska. The applicant proposes to remove existing piles and replace them with piles that are more deeply socketed so that the float can accommodate larger vessels including yachts, fish processors, and research vessels. Existing piles are not socketed deep enough to provide proper stability to safely support these vessels. Additionally, the float was damaged during a storm in June of 2017, and the existing piles are now leaning. This project would replace the existing piles with new piles that are socketed deeper into the ocean floor. Once the piles are replaced, the float will safely accommodate these larger vessels. Vibratory pile removal, vibratory pile driving, impact pile driving, and drilling would introduce sound into nearby waters at levels that could result in behavioral harassment of marine mammals.

Dates and Duration

Pile removal and installation is expected to occur for a total of approximately 13 hours over 3 days. The local Sitka Tribe requested that no pile driving occur between March 15 and May 31 to protect herring, as has been the case for past permitting in Sitka Sound. Therefore, and assuming weather conditions are favorable, CBS proposes to begin pile driving work on June 1, 2019. As a contingency, CBS requests an IHA for incidental take of marine mammals described within this application for one year, effective from June 1, 2019 through May 31, 2020.

Specific Geographic Region

The O'Connell Bridge Lightering Float is located near the prominent O'Connell Bridge within Crescent Bay and adjacent to Sitka Channel (see Figures 1, 2, and 3 of CBS's application). Crescent Bay is bounded by Sitka Channel to the northwest, Middle Channel to the southwest and Eastern Channel to the southeast, and a series of islands to the south. The bay is relatively shallow with a maximum depth of approximately 30 meters. The north side of the bay has riprap protected developed areas, including a boat harbor, and undeveloped shorelines on small islands to the south and on the eastern side of the bay. Lower intertidal and shallow subtidal areas are primarily cobbles and boulders with varying amounts of silt. The sediment thickness varies from 3 to 30 inches (PND 2017) until bedrock is reached. The float is located in an active marine commercial and industrial area.

Detailed Description of Specific Activity

CBS plans to remove and replace the six piles that support the O'Connell Bridge Lightering Float. The existing float consists of two 100-foot long by 5-foot wide aluminum gangways and a 180-foot long by 10-foot wide concrete modular float system restrained by six 16-inch diameter steel pipe piles that are socketed 4 feet deep into bedrock. The existing piles would be removed and replaced with six new 16-inch diameter steel piles that would be socketed 12 feet deep into bedrock. Pile installation and removal is expected to occur over three days. Construction includes the following activities:

- Temporarily remove the existing concrete lightering float and associated aluminum gangways (Note: these components are removed each winter and reinstalled in the summer.);
- Remove six (6) 16-inch diameter steel pipe piles that support the float;
- Install six (6) 16-inch diameter galvanized steel pipe piles (0.5-inch wall); and
- Reinstall the floating dock and gangways.

The following equipment would be used:

- Vibratory Hammer: ICE 44B/12,450 pounds static weight;
- Diesel Impact Hammer: Delmar D46/Max Energy 107,280 ft.-pounds;
- Drilled shaft drill: Hole 100,000 ft-lb. top drive with down-the-hole (DTH) hammer and bit; and
- Socket drill: Whole 100,000 ft-lb. top drive with DTH hammer and under-reamer bit.

The first step would be to remove the existing piles by direct pull using a crane. If the direct pull method is ineffective, the piles would be extracted with a vibratory hammer. In this case, the vibratory hammer would be clamped onto the pile and operated while using a crane to pull the pile upwards.

Next, the new piles would be installed. First the piles would be vertically stabilized by being vibrated into the existing 4-foot deep sockets. Next the piles would be socketed into the underlying bedrock with a down-hole drill and under-reamer bit (the drill will be used first to drill a hole in the bedrock to a depth of approximately 12 feet and then to socket the pile into the bedrock). After the pile is socketed, the contractor may choose to impact proof the piles. In this case, two to five blows of an impact hammer would be used per pile to confirm that piles are set into bedrock.

Pile removal and installation are expected to occur on three days. On the first day the existing piles would be removed, and the new piles would be vibrated into position. Over the second and third day, the piles would be socketed into bedrock. At the end of the third day, the piles would be impact proofed, if necessary. Table 1 provides a conservative estimate of the amount of time required for pile installation and removal.

TABLE 1—PILE DRIVING CONSTRUCTION SUMMARY

	Existing pile removal	Permanent pile installation	Max installation/ removal per day
Pile Diameter and Type	16-inch steel	16-inch steel.	
Number of Piles	6 piles	6 piles.	
Vibratory Pile Removal/Driving			
Max Number of Piles Vibrated Per Day	6 piles	6 piles	12 piles.
Vibratory Time Per Pile	5 minutes	5 minutes.	
Vibratory Time per day	30 minutes	30 minutes	60 minutes.
Vibratory Time Total	30 minutes	30 minutes.	

TABLE 1—PILE DRIVING CONSTRUCTION SUMMARY—Continued

	Existing pile removal	Permanent pile installation	Max installation/ removal per day
Socketing (down-hole drilling)			
Max Number of Piles Socketed per Day	0	3 piles	3 piles.
Socket Time Per Pile	0	2 hours.	
Socket Time per Day	0	6 hours	6 hours.
Socket Time Total	0	12 hours.	
Impact Pile Driving			
Max Number of Piles Impacted Per Day	0	6 piles	6 piles.
Number of Strikes Per Pile	0	2–5 strikes	30 strikes.
Impact Time Per Pile	0	30 seconds.	
Impact Time per Day	0	3 minutes	3 minutes.
Impact Time Total	0	3 minutes.	

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence in Crescent Bay and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Alaska SARs (*e.g.,* Muto *et al.* 2018). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 SARs (Muto *et al.* 2018) and draft 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*)

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT WITHIN SITKA SOUND DURING THE SPECIFIED ACTIVITY

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{Min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	-, -, Y	10,103 (0.3, 7,891, 2006)	83	26
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Alaska Resident	-, -, N	2,347 (N/A, 2,347, 2012) [4].	24	1
		Northern Resident	-, -, N	261 (N/A, 261, 2011)[4]	1.96	0
		Gulf of Alaska, Aleutian Islands, Bering Sea Transient.	-, -, N	587 (N/A, 587, 2012) [4]	5.87	1
		West Coast Transient	-, -, N	243 (N/A, 243, 2009) [4]	2.4	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Southeast Alaska	-, -, Y	975 (0.12–0.14, 897, 2012) [5].	8.9	34

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT WITHIN SITKA SOUND DURING THE SPECIFIED ACTIVITY—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{Min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Western U.S.	E, D, Y	54,267 (N/A, 54,267, 2017).	326	252
		Eastern U.S.	-, D, Y	41,638 (N/A, 41,638, 2015).	2498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	Sitka/ Chatham Strait	-, -, N	14,855 (N/A, 13,212, 2011).	555	77

[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: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N/A).

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). 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] N is based on counts of individual animals identified from photo-identification catalogs.

[5] In the SAR for harbor porpoise, NMFS identified population estimates and PBR for porpoises within inland southeast Alaska waters (these abundance estimates have not been corrected for g(0); therefore, they are likely conservative).

Multiple additional marine mammal species may occasionally enter Sitka sound but would not be expected to occur in shallow nearshore waters of the action area. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species. Gray whales are observed in and outside of Sitka Sound during their northward spring migration; however, they occur generally north and west of the project area in outer shelf waters of Sitka Sound during the summer. Similarly, minke whales in Alaska are migratory and would be found further north during the summer. Dall's porpoise are observed in mid- to outer-shelf coastal waters of Sitka Sound ranging to the Gulf of Alaska and are not expected to occur in the project area. Pacific white-sided dolphins occur in the outer-shelf slope in the Gulf of Alaska, which is outside of the project area. Sperm whales, fin whales and Cuvier's beaked whales generally occur in deeper offshore waters. During eight years of local surveys, only three gray whales and seven Pacific white sided dolphins were observed. The sperm whale, Cuvier's beaked whale, minke whale and Dall's porpoise were not observed (Straley *et al.* 2018). Therefore, no take is requested for these species and they are not considered further in this proposed IHA.

Cetaceans

Humpback Whale

The humpback whale is distributed worldwide in all ocean basins. In winter, most humpback whales occur in the subtropical and tropical waters of the Northern and Southern Hemispheres, and migrate to high latitudes in the summer to feed. The historic summer feeding range of humpback whales in the North Pacific encompassed coastal and inland waters around the Pacific Rim from Point Conception, California, north to the Gulf of Alaska and the Bering Sea, and west along the Aleutian Islands to the Kamchatka Peninsula and into the Sea of Okhotsk and north of the Bering Strait.

Under the MMPA, there are three stocks of humpback whales in the North Pacific: (1) The California/Oregon/Washington and Mexico stock, consisting of winter/spring populations in coastal Central America and coastal Mexico which migrate to the coast of California to southern British Columbia in summer/fall; (2) the central North Pacific stock, consisting of winter/spring populations of the Hawaiian Islands which migrate primarily to northern British Columbia/Southeast Alaska, the Gulf of Alaska, and the Bering Sea/Aleutian Islands; and (3) the western North Pacific stock, consisting of winter/spring populations off Asia which migrate primarily to Russia and the Bering Sea/Aleutian Islands. The central North Pacific stock is the only stock that is found near the project activities.

On September 8, 2016, NMFS published a final rule dividing the globally listed endangered species into 14 Distinct Population Segments (DPS), removing the worldwide species-level listing, and in its place listing four DPSs as endangered and one DPS as threatened (81 FR 62259; effective October 11, 2016). Two DPSs (Hawaii and Mexico) are potentially present within the action area. The Hawaii DPS is not listed and the Mexico DPS is listed as threatened under the ESA. The Hawaii DPS is estimated to contain 11,398 animals where the Mexico DPS is estimated to contain 3,264 animals (Wade *et al.* 2016).

Humpback whales are known to undertake seasonal migrations from their tropical calving and breeding grounds in winter to their high-latitude feeding grounds in summer. However, they have been observed in Southeast Alaska in all months of the year. Humpback whales are most common in Sitka Sound's Eastern Channel in November, December, and January (Straley *et al.* 2018). In late fall and winter, herring sometimes overwinter in deep fjords in Silver Bay and Eastern Channel, and humpback whales aggregate in these areas to feed on them. At some point in the late winter, it is likely that whales migrate south across the North Pacific to their mating and calving grounds in Hawaii and Mexico; however, this likely occurs after herring have moved out of the fjords. In the summer when prey is dispersed throughout Sitka Sound, humpback whales also disperse throughout the

Sound and away from the project area (Straley 2017).

Killer Whale

Killer whales have been observed in all oceans and seas of the world, but the highest densities occur in colder and more productive waters found at high latitudes. Killer whales are found throughout the North Pacific, and occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (Muto *et al.* 2017).

Based on data regarding association patterns, acoustics, movements, and genetic differences, eight killer whale stocks are now recognized: (1) The Alaska Resident stock; (2) the Northern Resident stock; (3) the Southern Resident stock; (4) the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock; (5) the AT1 Transient stock; (6) the West Coast transient stock, occurring from California through southeastern Alaska; and (7) the Offshore stock, and (8) the Hawaiian stock. Only the Alaska resident; Northern resident; Gulf of Alaska, Aleutian Islands, and Bering Sea Transient (Gulf of Alaska transient); and the West coast transient stocks are considered in this application because other stocks occur outside the geographic area under consideration. Any of these four stocks could occur in the action area.

Local observational data by Straley (2017) demonstrated that transient killer whales, primarily from the West Coast transient stock, occur most frequently in the project area. Less often, whales from the Eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea transient stock occur in the project area. Because of their transient nature, it is difficult to predict when killer whales will be present in the area. Whales from the Alaska resident stock and the Northern resident stock primarily feed on fish and do occur in Southeast Alaska; however, they are rare in the project area (Straley 2017).

Harbor Porpoise

The harbor porpoise inhabits temperate, subarctic, and arctic waters. In the eastern North Pacific, harbor porpoises range from Point Barrow, Alaska, to Point Conception, California. Harbor porpoise primarily frequent coastal waters and occur most frequently in waters less than 100 m deep (Hobbs and Waite 2010). They may occasionally be found in deeper offshore waters.

In Alaska, harbor porpoises are currently divided into three stocks, based primarily on geography: (1) The Southeast Alaska stock—occurring from the northern border of British Columbia to Cape Suckling, Alaska, (2) the Gulf of Alaska stock—occurring from Cape Suckling to Unimak Pass, and (3) the Bering Sea stock—occurring throughout the Aleutian Islands and all waters north of Unimak Pass. Only the Southeast Alaska stock is considered in this application because the other stocks are not found in the geographic area under consideration.

Harbor porpoises commonly frequent nearshore waters, but are not common in the project vicinity. Monthly observation from Sitka's Whale Park show harbor porpoises occurring infrequently in or near the action area in March, April, and October between 1994 to 2002 (Straley *et al.* 2018). Meanwhile, no harbor porpoises have been observed more recently during monitoring (Windward 2017 and Turnagain 2017, Turnagain 2018).

Pinnipeds

Steller Sea Lion

The Steller sea lion is the largest of the eared seals, ranging along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands. Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). Subsequently, NMFS published a final rule designating critical habitat for the species as a 20 nautical mile buffer around all major haulouts and rookeries, as well as associated terrestrial, air and aquatic zones, and three large offshore foraging areas (58 FR 45269; August 27, 1993). In 1997, NMFS reclassified Steller sea lions into two DPSs based on genetic studies and other information (62 FR 24345; May 5, 1997). Steller sea lion populations that primarily occur west of 144° W. (Cape Suckling, Alaska) comprise the western DPS (wDPS), while all others comprise the eastern DPS (eDPS); however, there is regular movement of both DPSs across this boundary (Jemison *et al.* 2013). Upon this reclassification, the wDPS became listed as endangered while the eDPS remained as threatened (62 FR 24345; May 5, 1997). In November 2013, the eDPS was delisted (78 FR 66140). Based on recent observations of branded animals in Southeast Alaska, NMFS estimates that 98 percent of Steller sea lions occurring within the action area belong to the eDPS, leaving 2 percent to the wDPS (Suzie Teerlink, pers. comm, May 19, 2017).

Steller sea lions are common in the inside waters of southeastern Alaska and are common in the vicinity of the project and both Eastern DPS and Western DPS species are thought to be within Sitka Sound. Steller sea lions were seen during every month of monitoring (September to May) between 1994 and 2002 (Straley *et al.* 2018).

Because the action area contains a herring processing plant, animals may linger in the area to feed opportunistically. Anecdotal evidence from staff at the fish processing plant indicate that multiple (up to 10) Steller sea lions may reside in the area for multiple days (Straley *et al.* 2018).

The project action area does not overlap Steller sea lion critical habitat. The Biorka Island haulout is the closest designated critical habitat and is over 25 kilometers southwest of the project area. Steller sea lions also haul out on buoys and navigational markers in Sitka Sound and along the rocky shores of Sugarloaf south of the project site. However, these haulouts are far beyond the expected extent of in-water and in-air noise disturbance thresholds for hauled out pinnipeds.

Harbor Seal

Harbor seals range from Baja California north along the coasts of Washington, Oregon, California, British Columbia, and Southeast Alaska; west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands. They haul out on rocks, reefs, beaches, and drifting glacial ice, and feed in marine, estuarine, and occasionally fresh waters. Harbor seals are generally non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction.

Harbor seals in Alaska are partitioned into 12 separate stocks based largely on genetic structure: (1) The Aleutian Islands stock, (2) the Pribilof Islands stock, (3) the Bristol Bay stock, (4) the North Kodiak stock, (5) the South Kodiak stock, (6) the Prince William Sound stock, (7) the Cook Inlet/Shelikof stock, (8) the Glacier Bay/Icy Strait stock, (9) the Lynn Canal/Stephens Passage stock, (10) the Sitka/Chatham stock, (11) the Dixon/Cape Decision stock, and (12) the Clarence Strait stock. Only the Sitka/Chatham stock is considered in this proposed IHA. The range of this stock includes Cape Bingham south to Cape Ommaney and the adjacent coastal and inshore waters, including the project area.

Harbor seals are common in the inside waters of southeastern Alaska, including

in the vicinity of the O'Connell Bridge Lightering Float. The species were seen during most months of monitoring (September through May) from observation from the Sitka Whale Park between 1994 and 2002, except in December and May (Straley *et al.* 2018). Harbor seals were also commonly observed at nearby locations according to recent monitoring reports (Turnagain 2017 and Windward 2017, Turnagain 2018). Similar to Steller sea lions, harbor seals may linger in the action area for multiple days; however, no designated haulouts are within close proximity.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 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 (2018) for a review of available information. Five marine mammal species (three cetacean and two pinniped (one otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Of the cetacean species that may be present, one is classified as a low-frequency cetacean (*i.e.,* humpback whale), one is classified as a mid-frequency cetacean (*i.e.,* killer whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving and removal, and drilling. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018). Non-impulsive sounds (*e.g.* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid

rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). 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).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.* 2005).

Drilling would be conducted using a down-the-hole drill inserted through the hollow steel piles. A down-the-hole drill is a drill bit that drills through the bedrock using an impact mechanism that functions at the bottom of the hole. This breaks up rock to allow removal of debris and insertion of the pile. The head extends so that the drilling takes place below the pile. The sounds produced by the down-the-hole drilling method are considered continuous as the noise from the drilling component is dominant. In addition, this method likely increases sound attenuation because the noise is primarily contained within the steel pile and below ground rather than impact hammer driving methods which occur at the top of the pile and introduce sound into the water column to a greater degree.

The likely or possible impacts of CBS's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal and drilling.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal and down-the-hole drilling is the primary means by which marine mammals may be harassed from CBS's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007). In general, exposure to pile driving and drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.* 2004; Southall *et al.* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.* 1958, 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Ahroon *et al.* 1996; Henderson *et al.* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, 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. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. 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 Table 5 in NMFS (2018). Installing piles requires a combination of impact pile driving, vibratory pile driving, and down-the-hole drilling. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal and drilling also has the potential to behaviorally disturb marine mammals. 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, l*et al*one 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).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). 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). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

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.

In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.,* pile driving and down-hole drilling) at the Kodiak Ferry Dock (see 80 FR 60636 for Final IHA **Federal Register** notice). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the Level B disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 meters of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements). Monitoring reports from other recent pile driving and down-the-hole drilling projects in Alaska have observed similar behaviors (for example, the Biorka Island Dock Replacement Project).

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). 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.,*

pile driving, 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. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal and down-the-hole drilling that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

CBS construction activities at the O'Connell Bridge lightering float could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact pile driving, elevated levels of underwater noise would ensonify a portion of Sitka Sound where both fish and mammals occur and could affect foraging success.

Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound. These sounds would not be detectable at the nearest known Steller sea lion haulouts, and all known harbor seal haulouts are well beyond the maximum distance of predicted in-air acoustical disturbance.

In-water pile driving, pile removal, and drilling activities would also cause short-term effects on water quality due to increased turbidity. Local strong currents are anticipated to disburse suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. CBS would employ standard construction best management practices, thereby reducing any impacts. Therefore, the impact from increased turbidity levels is expected to be discountable.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in Crescent Bay and Sitka Sound and does not include any BIAs or ESA-designated critical habitat. Pile installation/removal and drilling may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. CBS must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds would be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity in Crescent Bay and Sitka Sound.

The duration of the construction activities is relatively short. The construction window is for a maximum of 3 days during daylight hours only. Impacts to habitat and prey are expected to be minimal based on the short duration of activities.

In-water Construction Effects on Potential Prey (Fish)—Construction activities would produce continuous (*i.e.,* vibratory pile driving and down-the-hole drilling) and intermittent (*i.e.* impact driving) sounds. Fish react to sounds that 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 pile driving on fish, although several are based on studies in support of large, multiyear bridge 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 pile driving and drilling activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish and juvenile salmonid outmigratory routes

in the project area. Both herring and salmon form a significant prey base for Steller sea lions, herring is a primary prey species of humpback whales, and both herring and salmon are components of the diet of many other marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 feet or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish and salmon are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area.

In summary, given the short daily duration of sound associated with individual pile driving and drilling events and the relatively small areas being affected, pile driving and drilling activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on 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 ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to impact and vibratory hammers and down-the-hole drilling. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown—discussed in detail below in Proposed Mitigation section), Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

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 what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. CBS's proposed activity includes the use of continuous (vibratory pile driving/removal and drilling) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). CBS's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving/removal and drilling) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{p,0\text{-}pk,flat}$: 219 dB; $L_{E,p,\ LF,24h}$: 183 dB	$L_{E,p,\ LF,24h}$: 199 dB.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Mid-Frequency (MF) Cetaceans	$L_{p,0\text{-}pk,flat}$: 230 dB; $L_{E,p,\ MF,24h}$: 185 dB	$L_{E,p,\ MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{p,0\text{-}pk,flat}$: 202 dB; $L_{E,p,\ HF,24h}$: 155 dB	$L_{E,p,\ HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{p,0\text{-}pk.flat}$: 218 dB; $L_{E,p,\ PW,24h}$: 185 dB	$L_{E,p,\ PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{p,0\text{-}pk,flat}$: 232 dB; $L_{E,p,\ OW,24h}$: 203 dB	$L_{E,p,\ OW,24h}$: 219 dB.

* Dual metric 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 are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa^{2}s. In this table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). 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 weighted 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 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, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal and down-the-hole drilling). The maximum (underwater) ensonified area is truncated by land masses and largely confined to marine waters within Eastern Channel of Sitka Sound, extending approximately 7.7 kilometers through Crescent Bay, Middle Channel, and into Eastern Channel and encompassing approximately 7.26 square kilometers (see Figure 5 in the application).

The distances to the Level A and Level B harassment thresholds were calculated based on source levels from the Naval Base Kitsap at Bangor EHW–1 Pile Replacement Project, in Bangor, Washington (NAVFAC 2012) and the Kodiak Ferry Terminal Project in Kodiak, Alaska (Denes et. al. 2016) for a given activity and pile type (*e.g.,* vibratory removal/installation, drilling, and impact pile driving of 24-inch diameter steel piles). The vibratory source level is proxy from 24-inch steel piles driven at the Naval Base Kitsap in Bangor, Washington (NAVFAC 2012) and from acoustic modeling of nearshore marine pile driving at Navy installations in Puget Sound (United States Navy 2015). The socketing source level is proxy from mean measured sources levels from drilling of 24-inch diameter piles to construct the Kodiak Ferry Terminal (Denes *et al.* 2016). Sound pressure level root-mean-square (SPL rms) values were used to calculate distance to Level A and B harassment isopleths for impact pile driving. The source levels of 168.2 SEL (for Level A harassment) and 181.3 SPL (for Level B harassment) are the mean measured levels from the Kodiak Ferry Terminal project (Denes *et al.* 2016).

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * Log_{10} (R_1/R_2)$, where

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R_1= the distance of the modeled SPL from the driven pile, and

R_2= the distance from the driven pile of the initial measurement

A practical spreading value of fifteen is often used under conditions, such as at the lightering dock location, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

When the 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 harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving and drilling, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported in Tables 4 and 5. Isopleths for Level B harassment associated with impact pile driving (160 dB) and vibratory pile driving/removal and drilling (120 dB) were also calculated and are can be found in Table 5.

TABLE 4—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING HARASSMENT ISOPLETHS

Spreadsheet tab used	Vibratory driving	Drilling/socketing	Impact driving
	(A.1) Vibratory driving—stationary source: non-impulsive, continuous	(A) Stationary source: non-impulsive, continuous	(E.1): Impact pile driving (stationary source: impulsive, intermittent
Source Level (dB)	161 RMS SPL	167.7 RMS SPL	168.2 SEL.
Weighting Factor Adjustment (kHz)	2.5	2	2.
(a) Number of piles in 24-hr	12	n/a	6.
(b) Number of strikes/pile	n/a	n/a	5.
(c) Duration of sound (hours) within 24-h period	n/a	6	n/a.
(d) Duration of drive single pile (minutes)	5	n/a	n/a.
Propagation (xLogR)	15	15	15.
Distance of source level measurement (meters)	10	10	10.

* n/a: not applicable

TABLE 5—CALCULATED DISTANCES TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL AND DRILLING

Activity	Source level at 10 meters (dB)	Distance (m) to level A and level B thresholds					
		Level A					Level B
		Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid	
Vibratory Pile Driving/Removal							
16-inch steel removal and installation (12 piles) (~1 hour on 1 day).	161 SPL	6.8	0.6	10.1	4.2	0.3	5,412
Drilling/Socketing Pile Installation							
16-inch steel installation (6 piles) (6 hours per day on 2 days).	167.7 SPL	6.3	0.4	5.6	3.4	0.2	*15,136
Impact Pile Driving							
16-inch steel installation (6 piles) (~3 minutes per day on 1 day).	168.2 SEL/ 181.3 SPL.	9.9	0.4	11.8	5.3	0.4	263

* Ensonified are area would be truncated by land masses with a maximum extent of 7.7 km.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations and how this information is brought together to produce a quantitative take estimate.

Density information is not available for marine mammals in the project area. Potential exposures for marine mammals were estimated from several sources. Between the months of September through May from 1994 to 2002, weekly surveys were conducted at Sitka's Whale Park, located at the easternmost end of Eastern Channel as shown in Figure 5 in the application. More recent data (from 2002 to present) were collected from small vessels or Allen Marine 100-foot catamarans during school field trips in and around Eastern Channel. Additionally, marine mammal observational data was collected in the Sitka Channel as part of the Gary Paxton Industrial Park (GPIP) Multipurpose Dock Project (Turnagain 2017). Monitors were present during twenty-two days of in water work as part of this project. This included ten days between October 9th and 20th, 2017 for wooden pile removal, where only one monitor was present each day and twelve days between October 22nd and November 9th, where two observers were monitoring during new pile installation. Additionally, data was collected in January and October/November of 2017 in the Sitka Channel when Petro Marine Services removed and replaced a fuel float in the Sitka Channel and recorded marine mammal observations (Windward 2017). Finally, marine mammal observation reports covering the months of June through September, 2018 were also reviewed (Turnagain 2018).

Level B Harassment Calculations

The estimation of takes by Level B harassment uses the following calculation:

Level B harassment estimate = N (number of animals in the ensonified area) * Number of days of noise generating activities.

Humpback Whale

Humpback whales are the most commonly observed baleen whale in Southeast Alaska, particularly during spring and summer months. Humpback whales frequent the action area and could be encountered during any given

day of pile driving/removal activities. In the project vicinity, humpback whales typically occur in groups of 1 to 2 animals, with an estimated maximum group size of 4 animals. Most humpback whales observed in the area were solitary. When more than one whale was observed, available survey data reports a typical group size of 2–4 whales (Straley *et al.* 2018). During work on GPIP Dock, groups of 5 and 10 individuals were seen a few times, but most of the time, single whales were observed (Turnagain 2017). CBS conservatively estimates that a group of 5 humpback whales may occur within the Level B harassment zone every day of the 3-day construction window during active pile driving (5 animals in a group × 1 group each day × 3 days = 15 animals). Therefore, CBS requests and NMFS proposes to authorize 15 Level B harassment takes of humpback whales. Based on Wade *et al.* (2016), the probability is that 93.9 percent of the humpback whales taken would be from the Hawaii DPS (not listed under ESA) and 6.1 percent of the humpback whales taken would be from the ESA-listed threatened Mexico DPS.

Killer Whale

Killer whales pass through the action area and could be encountered during any given day of pile removal and installation. In the project vicinity, typical killer whale pod sizes vary from between 4–8 individuals, with an estimated maximum group size of 8 animals (Straley *et al.* 2018). A pod of three killer whales were observed during monitoring for the Petro Marine Dock, and a pod of seven whales were observed on one day near Biorka Island (Windward 2017; Turnagain 2018). CBS estimates that a group of 8 killer whales may occur within the Level B harassment zone every day of during active pile driving (8 animals in a group × 1 group each day × 3 days = 24 animals). Therefore, CBS requests and NMFS proposes to authorize 24 killer whales takes by Level B harassment.

Harbor Porpoise

Harbor porpoises are seen infrequently in the action area, but they could be encountered during any given day of pile replacement activities. The mean group size of harbor porpoise in Southeast Alaska was estimated to be between 2 to 3 individuals (Dahlheim *et al.,* 2009). In the project vicinity, harbor porpoises typically occur in groups of 1–5 animals, with an estimated maximum group size of 8 animals (Straley *et al.* 2018). No harbor porpoises were seen during the Petro Marine Dock construction monitoring in January 2017 or during monitoring for the GPIP dock between October and November of 2017 (Windward 2017 and Turnagain 2017). CBS conservatively estimates that a group of 5 harbor porpoise may occur within the Level B harassment zone once each day during the 3-day construction window during active pile driving (5 animals in a group × 1 group each day × 3 days = 15 animals). Therefore, CBS conservatively requests and NMFS proposes to authorize 15 Level B harassment takes of harbor porpoises.

Harbor Seal

Harbor seals are common in the action area and are expected to be encountered during pile replacement activities. In the action area harbor seals typically occur in groups of 1–3 animals. Observations near Sitka Channel recorded only individual seals, and observations for GPIP dock observed mostly individuals, however, a few groups with up to 3 seals were observed. Near Biorka Island, recent sightings ranged from 1 individual to a group of 9 (June and September 2018) groups up to 3 (July 2018), and groups up to 8 (August 2018). Harbor seals could occur in the project area every day. CBS conservatively estimates that 2 groups of 3 harbor seals may occur within the Level B harassment zone every day that pile driving occurs (3 animals in a group × 2 groups per day × 3 days = 18 animals). Therefore, CBS requests and NMFS proposes to authorize 18 harbor seal takes by Level B harassment.

Steller Sea Lion

Steller sea lions are common in the action area and are expected to be encountered during pile removal and driving. In the project vicinity Steller sea lions typically occur in groups of 1–8 animals near the project area (Turnagain 2017 and Windward 2017), with an estimated maximum group size of 100 animals (Straley *et al.* 2018). Steller sea lions can occur in the action area every day during construction. CBS conservatively estimates that a group of 8 Steller sea lions may occur within the Level B harassment zone every day that pile driving occurs (8 animals in a group × 1 group × 3 days = 24 animals). Therefore, CBS requests and NMFS proposes to authorize 24 takes of sea lion by Level B harassment.

CBS intends to avoid Level A harassment take by shutting down removal or installation activities at the approach of any marine mammal into their representative Level A harassment (PTS onset) zone.

TABLE 6—ESTIMATED TAKE BY LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF STOCK

Species	Stock	Level B	Percent of stock
Humpback Whale	Central North Pacific (10,103)	15	0.01
Killer Whale	Alaska Resident (2,347)	[1] 24	1.02
	Northern Resident (261)		9.20
	West Coast Transient (243)		9.88
	Gulf of Alaska, Aleutian Islands, Bering Sea Transient (587)		4.1
Harbor Porpoise	Southeast Alaska (975)	15	1.54
Harbor Seal	Sitka/Chatham Strait (14,855)	18	<0.01
Steller Sea Lion	Western DPS (54,267)	[1] 24	0.04
	Eastern DPS (41,638)		0.06

[1] Assumes all takes come from each individual stock.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for

incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, CBS will employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, etc.), 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. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For those marine mammals for which take by Level B harassment has not been requested, in-water pile installation/removal and drilling will shut down immediately if such species are observed within or on a path towards the monitoring zone (*i.e.,* Level B harassment zone); and
- If take reaches the authorized limit for an authorized species, pile driving activities will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following measures would apply to CBS's mitigation requirements:

Establishment of Shutdown Zone—For all pile driving/removal and drilling activities, CBS would establish a shutdown zone to avoid take by Level A harassment. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). The shutdown zone would be 10 m in all cases except for high-frequency cetaceans (harbor porpoises) during impact pile driving and vibratory pile driving/removal. In those situations the shutdown zone for high-frequency cetaceans would be 15 m (Table 7). These defined shutdown zones would be used to prevent incidental Level A harassment exposures and reduce the potential for such take for other species. The placement of Protected Species Observers (PSOs) during all pile driving and drilling activities (described in detail in the Monitoring and Reporting Section) will ensure shutdown zones are visible.

TABLE 7—PROPOSED SHUT DOWN ZONE FOR EACH PROJECT ACTIVITY

Noise source	Low-frequency cetaceans (humpback whale)	Mid-frequency cetaceans (killer whale)	High-frequency cetaceans (harbor porpoise)	Phocid (harbor seal)	Otariid (sea lion)
Vibratory Pile Driving/Removal					
16-inch steel removal and installation (12 piles) (~1 hour on 1 day)	10	10	15	10	10
Drilling/Socketing Pile Installation					
16-inch steel installation (6 piles) (6 hours per day on 2 days)	10	10	10	10	10
Impact Pile Driving					
16-inch steel installation (6 piles) (~3 minutes on 1 day)	10	10	15	10	10

Establishment of Monitoring Zones for Level B Harassment—CBS would establish monitoring zones to correlate with Level B harassment disturbance zones or zones of influence which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and drilling. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The proposed monitoring zones are described in Table 8. The monitoring zone for drilling activities extends 7,700 m from the noise source, corresponding to the maximum distance before landfall. It is likely that PSOs would not be able to effectively observe the entire monitoring zone. Therefore, Level B harassment exposures will be recorded and extrapolated based upon the number of observed takes and the

percentage of the Level B harassment zone that was not visible.

TABLE 8—LEVEL B HARASSMENT MONITORING ZONES

Pile driving noise source	Monitoring zones for take by Level B harassment (meters)
Vibratory Pile Driving	
16-inch steel removal and installation (12 piles) (~1 hour on 1 day)	5,500
Socketing Pile Installation	
16-inch steel installation (6 piles) (6 hours per day on 2 days)	7,700
Impact Pile Driving	
16-inch steel installation (6 piles) (~3 minutes per day on 1 day)	265

Use of Pile Caps/Cushions—Pile driving softening material (*i.e.* pile caps/cushions) will be used to minimize noise during vibratory and impact pile driving. Much of the noise generated during pile installation comes from contact between the pile being driven and the steel template used to hold the pile in place. The contractor will use high-density polyethylene (HDPE) or ultra-high-molecular-weight polyethylene (UHMW) softening material on all templates to eliminate steel on steel noise generation.

Direct Pull—To minimize construction noise levels as much as possible, the contractor will first attempt to direct pull old piles; if those efforts prove to be ineffective, they will proceed with a vibratory hammer.

Reduced Energy— To reduce noise production, the vibratory hammer will be operated at a reduced energy setting (30 to 50 percent of its rated energy).

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving (if more than one day) and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or drilling of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for the 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and non-permitted species are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal permitted for Level B take is present in the Level B harassment zone, activities may begin and Level B take will be recorded. As stated above, if the entire Level B harassment zone is not visible at the start of construction, piling driving or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone will commence.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or

cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Monitoring shall be conducted by NMFS-approved PSOs. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal and drilling 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 30 minutes.

PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. CBS would adhere to the following observer qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience.

(iv) NMFS will require submission and approval of observer CVs.

CBS must ensure that observers have the following additional qualifications:

1. Ability to conduct field observations and collect data according to assigned protocols;

2. Experience or training in the field identification of marine mammals, including the identification of behaviors;

3. Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

4. Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

5. 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.

Two land-based PSOs would be used to monitor the area during all pile driving and removal activities. One PSO would monitor from the O'Connell Bridge which features a high vantage point with unobstructed views of, and close proximity to, the project site. A second monitor would be stationed east of the construction site, likely off Islander Drive. PSOs will work in shifts lasting no longer than 4 hours with at least a 1-hour break between shifts, and will not perform duties as a PSO for more than 12 hours in a 24-hr period to reduce PSO fatigue.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal and drilling activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory);

• Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);

• The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;

• Age and sex class, if possible, of all marine mammals observed;

• PSO locations during marine mammal monitoring;

• Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

• Description of any marine mammal behavior patterns during observation, including direction of travel;

• Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any; and

• Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.

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 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, CBS would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the following information:

• Description of the incident;

• Environmental conditions (*e.g.,* Beaufort sea state, visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with CBS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CBS would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that CBS 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 (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), CBS would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with CBS to determine whether modifications in the activities are appropriate.

In the event that CBS 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), CBS would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. CBS would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal 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, pile removal and drilling activities as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take in the form of Level B harassment from underwater sounds generated from vibratory pile removal, vibratory pile driving, impact pile driving, and drilling over 3 days. Potential takes could occur if individuals of these species are present in the ensonified zone when these activities are underway. One day of work would be dedicated to removing 6 old and installing 6 new piles which would emit low levels of noise into the aquatic environment if removed via direct pull or vibratory hammer and installed via vibratory hammer as proposed. Vibratory removal and installation would take approximately one hour. Drilling would occur for only 6 hours per day over 2 days. Impact driving would be used to proof socketed piles and take place for a total of 3 minutes on a single day.

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; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving and drilling, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in southeast Alaska, which have taken place with no known long-term adverse consequences from behavioral harassment. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. Project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities and the relatively small area of the habitat that may be affected, and the decreased potential of prey species to be in the project area during the construction work window, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

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 stock through effects on annual rates of recruitment or survival:

• No mortality is anticipated or authorized;
• No Level A take is authorized;
• Level B harassment may consist of, at worst, temporary modifications in behavior (*e.g.* temporary avoidance of habitat or changes in behavior);
• The specified activity is temporary and of short duration;
• The ensonified area is very small relative to the overall habitat ranges of all species and does not include habitat areas of special significance (BIAs or ESA-designated critical habitat); and
• The presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

In addition, although affected humpback whales and Steller sea lions may be from a DPS that is listed under the ESA, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' ability to recover. In

combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

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 Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 6 presents the number of animals that could be exposed to received noise levels that may result in Level B take for the proposed work at O'Connell Bridge. Our analysis shows that less than 10 percent of the best available population estimate of each affected stock could be taken. Furthermore, these percentages conservatively assume that all takes of killer whale and Steller sea lion would be accrued to a single stock, when multiple stocks are known to occur in the project area. Therefore, the numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For pinnipeds, especially harbor seals and Steller sea lions, occurring in the vicinity of the project site, there could be some overlap in individuals present day-to-day, and these takes are likely to occur only within some small portion of the overall regional stock.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The peak hunting season in southeast Alaska occurs during the month of November and again over the March to April time frame (Wolfe *et al.,* 2013). The proposed project is in an area where subsistence hunting for harbor seals or sea lions could occur (Wolfe *et al.,* 2013), but the area near the proposed project location is not preferred for hunting.

During September 2018, CBS contacted the Alaska Harbor Seal Commission, the Alaska Sea Otter and Steller Sea Lion Commission, and the Sitka Tribe of Alaska. These organizations expressed no concerns about the impact of the proposed action on subsistence marine mammals or their harvest by hunters near the project area. The Sitka Tribe did request that no pile driving occur between March 15 and May 31 to protect herring, as has been the case for past permitting in Sitka Sound. In response to this request, CBS will not commence in-water construction operations prior to June 1, 2019 or between March 15, 2020 and May 31, 2020.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from CBS's proposed activities.

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 Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of the Steller sea lion western DPS and humpback whale Mexico DPS, which are listed under the ESA. The NMFS Office of Protected Resources has requested initiation of section 7 consultation with the Alaska Regional Office for the issuance of this IHA. NMFS will conclude the ESA 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 CBS for the O'Connell Bridge Lightering Float Pile Replacement project in Sitka, Alaska from June 1, 2019 through May 31, 2020, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the IHA itself is available for review in conjunction with this notice at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed action. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a second one-year IHA without additional notice when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the

IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

• A request for renewal is received no later than 60 days prior to expiration of the current IHA;

• The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

• Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: February 26, 2019.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–03684 Filed 2–28–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG808

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Intent To Prepare an Environmental Impact Statement; Scoping Process; Request for Comments

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

ACTION: Notice.

SUMMARY: The New England Fishery Management Council announces its intention to prepare, in cooperation with NMFS, an environmental impact statement in accordance with the National Environmental Policy Act. An environmental impact statement may be necessary to provide analytic support for Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan. Amendment 21 would consider measures related to the Northern Gulf of Maine Scallop Management Area, Limited Access General Category individual fishing quota possession limits, and the ability of Limited Access vessels with Limited Access General Category individual fishing quota permits to transfer quota to Limited Access General Category individual fishing quota-only vessels. The purpose of this notice is to announce a public process for determining the scope of issues to be addressed, to alert the interested public of the scoping process, the potential development of a draft environmental impact statement, and the opportunity for participation in that process.

DATES: Written and electronic scoping comments must be received on or before April 15, 2019.

ADDRESSES: Written scoping comments on Amendment 21 may be sent by any of the following methods:

• *Email* to the following address: *comments@nefmc.org*;

• *Mail* to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; or Fax to (978) 465–3116.

The scoping document is accessible electronically online at *www.nefmc.org/library/amendment-21.*

Requests for copies of the Amendment 21 scoping document and other information should be directed to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone, (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic sea scallop fishery is prosecuted along the east coast from Maine to Virginia, although most fishing activity takes place between Massachusetts and New Jersey. Management measures were first adopted in 1982, but there have been several major revisions to the management program over the following decades.

Development of the LAGC Fishery

The Council established the General Category component as an open access permit category in 1994 while developing a limited access program for qualifying vessels (now the Limited Access component). Through Amendment 11 to the Scallop Fishery Management Plan (FMP) (73 FR 20090; April 14, 2008), the Council transitioned the General Category component from open access to limited access to limit fishing mortality and control fleet capacity. The Council's vision for the Limited Access General Category (LAGC) component was a fleet made up of relatively small vessels, with possession limits to maintain the historical character of this fleet and provide opportunities to various participants, including vessels from smaller coastal communities. Amendment 11 established three LAGC permit categories which allowed for continued participation in the General Category fishery at varying levels. Vessels that met a qualifying criteria were issued an LAGC individual fishing quota (IFQ) permit and allocated quota based on the 'contribution factor' (*i.e.,* if you fished longer and landed more during the qualification period, you received a higher allocation). General Category permit holders that did not meet the qualifying criteria for an LAGC IFQ permit were eligible to receive either an LAGC Northern Gulf of Maine (NGOM) permit or LAGC Incidental permit. Limited Access vessels that fished under General Category rules and qualified under the same IFQ qualification criteria were issued LAGC IFQ permits and allocated a portion of (0.5 percent) of the total scallop allocation. Unlike vessels with only LAGC IFQ permits, Limited Access vessels that also qualified for an LAGC IFQ permit were not allowed to transfer quota in or out.

NGOM Management Area

The Council also established the NGOM Management Area and permit category through Amendment 11. The area was developed to enable continued fishing and address concerns related to conservation, administrative burden, and enforceability of scallop fishing within the Gulf of Maine. Amendment 11 authorized vessels with either an LAGC NGOM permit or LAGC IFQ permit to fish within the NGOM Management Area at a 200-pound-per-day trip limit until the annual total allowable catch (TAC) for the area is caught. The Council did not recommend restrictions on Limited Access vessels fishing in the NGOM because the improved management and abundance of scallops in the major resource areas on Georges Bank and in the Mid-Atlantic region made access to Gulf of Maine scallops less important for the Limited Access boats and General

Category boats from other regions. From 2008 through the end of fishing year 2017, Limited Access vessels were able to operate in the NGOM management area under days-at-sea (DAS) management as long as the LAGC TAC had not been caught. The initial measures were intended to allow directed scallop fishing in the NGOM, and the Council envisioned that management of this area would be reconsidered if the scallop population and fishery in the NGOM grew in the future.

From 2009–2015 the NGOM TAC of 70,000 lbs was not caught, and the fishery remained open for the entire year. In fishing year 2016 and fishing year 2017 there was a notable increase in effort in the NGOM management area by both LAGC and Limited Access vessels fishing the large year class of scallops on Stellwagen Bank. Monitoring removals by the Limited Access component in the NGOM was challenging because vessels could fish both inside and outside NGOM management area while fishing DAS on the same trip.

In response to the increase in effort and landings in the NGOM area in 2016 and 2017, the Council developed a problem statement for the Federal scallop fishery in the NGOM management area:

Recent high landings and unknown biomass in the NGOM Scallop Management Area underscore the critical need to initiate surveys and develop additional tools to better manage the area and fully understand total removals.

Recent actions have developed measures that allow managers to track fishing effort and landings by all components from the NGOM management area. The NGOM TAC is now based on recent survey information, with separate TACs for the Limited Access and LAGC components. These measures are intended to be a short-term solution to allow controlled fishing in the NGOM management area until a future action (this action) could be developed to address NGOM issues more holistically.

LAGC IFQ Possession Limits

The initial General Category possession limit was set at 400 pounds per trip through Amendment 4 (59 FR 2757; January 19, 1994). In 2007, Amendment 11 maintained the General Category possession limit of 400 pounds for qualifying IFQ vessels. Amendment 15 (76 FR 43746; July 21, 2011) increased the LAGC IFQ possession limit to 600 pounds following concerns from industry members that the 400-pound possession limit was not economically feasible due to increased operating costs. The 200-pound trip limit increase was not expected to change the nature of the ''dayboat'' fishery and would keep the LAGC IFQ component consistent with the vision statement laid out by the Council in Amendment 11. The Council has recently completed a program review of the LAGC IFQ fishery and analyzed the impacts of changes to IFQ trip limits. The results of this work are summarized in the Amendment 21 scoping document, which can be found at this link: *https://www.nefmc.org/library/amendment-21.*

Quota Transfers by Limited Access/LAGC IFQ Vessels

Amendment 15 allowed LAGC IFQ permit holders to permanently transfer some or all of their quota allocation to another LAGC IFQ permit holder while retaining the permit itself. During development of Amendment 15, the Council considered an option that would have included Limited Access/LAGC IFQ permit holders in this allowance; however, the Council opted against this option because it would change the overall 5 percent and 0.5 percent allocations specified in Amendment 11. For example, the 5 percent allocation would be expected to increase if a Limited Access/LAGC IFQ vessel permanently transferred quota to an LAGC IFQ-only vessel and, therefore, would have implications on quota accumulation caps that apply to LAGC IFQ-only permit holders (*i.e.,* 5 percent maximum for owners, 2.5 percent maximum for individual vessels).

Measures Under Consideration

NGOM Management Area

The Council is planning to develop measures that will support a growing directed scallop fishery in Federal waters in the NGOM. To do so, the action will consider measures that would prevent unrestrained removals from the NGOM management area and allow for orderly access to the scallop resource in this area by the LAGC and Limited Access components. This includes establishing mechanisms to set allowable catches and accurately monitor catch and bycatch.

LAGC IFQ Possession Limits and Limited Access Quota Transfers to LAGC IFQ Vessels

The Council is planning to develop measures that will increase the LAGC IFQ possession limit and allow Limited Access vessels to transfer IFQ to LAGC IFQ vessels to improve overall economic performance of the LAGC IFQ component. The Council is taking action to ensure that the LAGC IFQ component remains profitable, and that there is continued participation in the General Category fishery at varying levels. To do so, the action will consider approaches that aim to reduce the impacts of decreases in ex-vessel price and increases to fixed costs (*e.g.,* maintenance and repairs) and variable costs (*e.g.,* trip expenses including fuel, food, oil, ice, and water), on vessels and crews.

Public Comment

All persons affected by or otherwise interested in scallop fishery management are invited to participate in commenting on the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**) or by attending one of the 10 scoping meetings, including one webinar, for this amendment. Scoping consists of identifying the range of actions, alternatives, and possible impacts to be considered. After the scoping process is completed, the Council will begin development of Amendment 21 and expects to prepare an environmental impact statement (EIS) to analyze the impacts of the range of alternatives for the changes considered in this action. The Council will hold public hearings to receive comments on the draft amendment and on the analysis of its impacts presented in the Draft EIS.

The Council will take and discuss scoping comments on this amendment at the following public meetings:

Date and time	Location
Rockland, ME, Thursday, February 28, 2019, 1:00 p.m.–3:00 p.m.	Samoset Resort, 220 Warrenton Street, Rockport, ME 04856, Telephone: (207) 594–2511.
Riverhead, NY, Thursday, March 7, 2019, 6:00 p.m.–7:30 p.m.	Hotel Indigo, 1830 West Main Street, Route 25, Riverhead, NY 11901, Telephone: (631) 369–2200.
Narragansett, RI, Friday, March 8, 2019, 3 p.m.–4:30 p.m.	Corless Auditorium, University of Rhode Island, Graduate School of Oceanography, 215 South Ferry Road, Narragansett, RI 02882, Telephone: (401) 874–6222.

Date and time	Location
New Bedford, MA, Wednesday, March 20, 2019, 6 p.m.–8 p.m.	Waypoint Event Center, 185 MacArthur Drive, New Bedford, MA 02740, Telephone: (774) 634–2099.
Chatham, MA, Thursday, March 21, 2019, 6 p.m.–8 p.m.	Chatham Community Center, 702 Main Street, Chatham, MA 02633, Telephone: (508) 945–5175.
Webinar, Friday, March 22, 2019, 10 a.m.–noon	*https://attendee.gotowebinar.com/register/8181759988548273922*. After registering, you will receive a confirmation email containing information about joining the webinar.
Hampton, VA, Monday, March 25, 2019, 6:00 p.m.–7:30 p.m.	Embassy Suites, 1700 Coliseum Drive, Hampton, VA 23666, Telephone: (757) 827–8200.
Cape May, NJ, Tuesday, March 26, 2019, 6:00 p.m.–7:30 p.m.	Grand Hotel of Cape May, 1045 Beach Avenue, Cape May, NJ 08204, Telephone: (609) 884–5611.
Manahawkin, NJ, Wednesday, March 27, 2019, 10 a.m.–11:30 a.m.	Holiday Inn, 151 Route 72 West, Manahawkin, NJ 08050, Telephone: (609) 481–6100.
Gloucester, MA, Wednesday, April 3, 2019, 6:00 p.m.–8:00 p.m.	Massachusetts Division of Marine Fisheries, 30 Emerson Ave., Gloucester, MA 01930, Telephone: (978) 282–0308.

Special Accommodations

The meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least five days prior to meeting dates.

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

Dated: February 26, 2019.

Karen H. Abrams,

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

[FR Doc. 2019–03782 Filed 2–27–19; 4:15 pm]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add product to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

DATES: Comments must be received on or before: March 31, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product is proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

NSN—Product Name: 6550–00–NIB–0023—Test Cup, Drug Detection, Round, 2 7/8″ D x 3 1/2″ H, 13-card dipcard
Mandatory Source of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: Defense Logistics Agency, DLA Troop Support

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSNs—Product Names:
8010–00–616–9143—Enamel, Lacquer
8010–00–910–8154—Enamel, Lacquer
8010–01–167–1139—Enamel, Lacquer
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: FAS Heartland Regional Administrato, Kansas City, MO
NSN—Product Name:
7930–01–512–7171—Disinfectant, Deodorizer, Neutral, Biobased, Floral/Citrus Fragrance, 1 Gal
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: GSA/FSS Greater Southwest Acquisiti, Fort Worth, TX
NSNs—Product Names:
7520–01–542–5941—Pen, Ball Point, Econogard, Retractable, Cushion Grip, White Barrel, Black Ink, Medium Point
7520–01–542–5953—Pen, Ball Point, Econogard, Retractable, Cushion Grip, White Barrel, Black Ink, Fine Point
Mandatory Source of Supply: Industries of the Blind, Inc., Greensboro, NC
Contracting Activity: GSA/FAS Admin Svcs Acquisition Br (2, New York, NY)

Service(s)

Service Type: Shelf Stocking & Custodial
Mandatory for: Fort Monmouth, Fort Monmouth, NJ
Service Type: CSS/Custodial/Warehousing, Shelf Stocking & Custodial, Warehousing
Mandatory for: Buckley AFB, 365 N Telluride, Aurora, CO
Mandatory Source of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: Defense Commissary Agency
Service Type: Administrative Services for Catalog Distribution
Mandatory for: Defense Reutilization and Marketing Service, Battle Creek, MI
Mandatory Source of Supply: Packham Vocational Industries, Inc., Lansing, MI
Contracting Activity: Defense Logistics Agency, DLA Disposition Services
Service Type: Furniture Rehabilitation
Mandatory for: Parris Island USMC Depot, USMC Recruit Depot, Parris Island, SC
Mandatory Source of Supply: Beaufort Vocational Rehabilitation Center, Beaufort, SC
Contracting Activity: Dept of the Navy, Commanding General
Service Type: Janitorial/Custodial
Mandatory for: Puget Sound Naval Shipyard: Equipment Maintenance Shops, Bremerton, WA
Mandatory Source of Supply: Peninsula Services, Bremerton, WA
Mandatory for: Fort Story: Buildings P–102, T–605, T–750, T–751, T–752, T–754, T–755, T–756, T–757, T–761, T–766, T–767, T–772, Fort Story, VA
Mandatory Source of Supply: Didlake, Inc., Manassas, VA
Mandatory for: Naval & Marine Corps Reserve Center: Training Building, Portland, OR
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command
Service Type: Grounds Maintenance
Mandatory for: Loyalhanna & Conemaugh Dam: 400 Loyalhanna Dam Road, Saltsburgh, PA
Mandatory Source of Supply: The Burnley

Workshop of the Poconos, Inc., Stroudsburg, PA
Contracting Activity: Dept of the Army, W6QM MICC CTR-FT DIX (RC)

Patricia Briscoe,
Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–03672 Filed 2–28–19; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, March 7, 2019.

PLACE: CFTC Headquarters, Lobby-Level Hearing Room, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- Amendment to the Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants;
- Comparability Determination for Australia: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants;
- National Futures Association (''NFA'') Proposal to Amend Certain NFA Compliance Rules and Interpretive Notices to Incorporate Swaps;
- Notice of Revised Registration Form 7–R;
- Final Rule Amending Regulations on Segregation of Assets Held as Collateral in Uncleared Swap Transactions; and
- System of Records Notices for CFTC Privacy Act Systems CFTC–12 (NFA Applications Suite), CFTC–45 (Comments Online), and CFTC–53 (Contact Lists).

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Dated: February 26, 2019.

Christopher Kirkpatrick,
Secretary of the Commission.

[FR Doc. 2019–03768 Filed 2–27–19; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DOD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army War College Board of Visitors, a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The U.S. Army War College Board of Visitors Subcommittee will meet from 8:00 a.m. to 2:00 p.m. on March 15, 2019.

ADDRESSES: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, PA 17013.

FOR FURTHER INFORMATION CONTACT: Dr. David Dworak, the Alternate Designated Federal Officer for the subcommittee, in writing at Office of the Provost, 122 Forbes Ave., Carlisle, PA 17013, by email at *david.d.dworak.civ@mail.mil,* or by telephone at (717) 245–3365.

SUPPLEMENTARY INFORMATION: The subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act 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 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide the subcommittee with an overview of the U.S. Army War College Academic Campaign Plan, discuss Middle States and JPME II accreditation matters, and to address other administrative matters.

Agenda: The subcommittee will review and evaluate information related to the continued academic growth, accreditation, and development of the U.S. Army War College. General deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Dr. David Dworak, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public attending the subcommittee meetings will not be permitted to present questions from the floor or speak to any issue under consideration by the subcommittee. Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeing to enter and exit the installation. Root Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Dr. David Dworak, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Dr. David Dworak, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate Designated Federal Official will review all submitted written comments or statements and provide them to members of the subcommittee for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Official at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting.

The Alternate Designated Federal Officer will review all comments timely submitted with the subcommittee Chairperson, and ensure comments are provided to all members of the subcommittee before the meeting. After reviewing any written comments

submitted, the subcommittee Chairperson and the Alternate Designated Federal Official may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Alternate Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–03677 Filed 2–28–19; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of federal advisory committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is renewing the charter for the Board on Coastal Engineering Research (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board's charter is being renewed pursuant to 33 U.S.C. 426–2 and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a). The Board's charter and contact information for the Board's Designated Federal Officer (DFO) can be found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.* The Board provides the Coastal and hydraulics Laboratory, which includes the Coastal Engineering Research Center, through the Chief of Engineers/Commander (''the Chief of Engineers''), U.S. Army Corps of Engineers (''the Corps of Engineers''), independent advice and recommendations on coastal engineering research priorities and additional functions as assigned by the Chief of Engineers.

Pursuant to 33 U.S.C. 426–2, the Board shall be composed of seven members. The DoD, pursuant to the authorizing legislation, shall appoint four officers of the Corps of Engineers to the Board as ex-officio appointments, with one position being occupied by the Deputy Commanding General for Civil and Emergency Operations, U.S. Army Corps of Engineers for no fixed term of service. The Chief of Engineers, in consultation with the Assistant Secretary of the Army (Civil Works), shall determine which three of the eight coastal division commanders shall be nominated as the other ex-officer members of the Board. The Chief of Engineers, in determining which of the coastal division commanders shall serve on the Board, shall consider the individual's tenure as a division commander and his or her expertise in the matters before the Board.

The remaining three Board members shall be civilian engineers recommended by the Chief of Engineers for their expertise in the field of beach erosion, shore protection, and coastal processes and infrastructure. The Deputy Commanding General for Civil and Emergency Operations, Corps of Engineers, shall serve as the President of the Board.

The appointment of the civilian Board members and the three coastal division commanders shall be approved by the Secretary of Defense, the Deputy Secretary of Defense, or the Chief Management Officer for the Department of Defense (CMO) (''the DoD Appointing Authorities''), for a term of service of one-to-four years, in accordance with DoD policies and procedures. No member, unless approved by the DoD Appointing Authorities, may serve more than two consecutive terms of service on the Board, to include its subcommittees, or serve on more than two DoD federal advisory committees at one time. All Board members are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

Pursuant to section 105 of Public Law 91–611, special government employee members may be paid at a rate not to exceed the daily equivalent of the rate for a GS–15, step 10, for each day of attendance at Board meetings, not to exceed 30 days per year, in addition to travel and other necessary expenses connected with their official duties on the Board, in accordance with the provisions of 5 U.S.C. 5703(b), (d) and 5707. Regular government employee members may be reimbursed for official Board-related travel and per diem.

The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: February 26, 2019.

Shelly Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–03700 Filed 2–28–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0134]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; FSA Payment Vehicle Account (PVA) Program Pilot Institutions

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 1, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0134. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: FSA Payment Vehicle Account (PVA) Program Pilot Institutions.

OMB Control Number: 1845–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 40.

Total Estimated Number of Annual Burden Hours: 1,250.

Abstract: This is a request for clearance of a new information collection to be used to obtain information from institutions of higher education (IHEs) that participate in the student financial assistance programs under title IV of the Higher Education Act of 1965, as amended. This information collection will be used to invite IHEs to complete an application questionnaire to participate in Federal Student Aid's (FSA) Next Generation Financial Services Environment—Payment Vehicle Account (PVA) program pilot as well as a follow-on questionnaire used to ask pilot progress questions to gauge early pilot progress. We are requesting that the full clearance package be filed and that the 60 day public comment period be initiated at this time.

Dated: February 26, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–03670 Filed 2–28–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2018–IES–0126]

Proposed 2020 Update to the Classification of Instructional Programs (CIP) and Request for Comment

AGENCY: Institute for Education Sciences, Department of Education.

ACTION: Request for public comment; reopening of comment period.

SUMMARY: On December 27, 2018, the Department published in the **Federal Register** a request for public comment on the proposed updates to the Classification of Instructional Programs. That notice provided a 60-day comment period from December 27, 2018, through February 25, 2019. The Department is reopening the public comment period until March 26, 2019.

DATES: Comments must be submitted to the Department on or before March 26, 2019.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. The Department will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under ''How to use Regulations.gov'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. If, however, you mail or deliver your comments about the proposed updates, address them to Commissioner, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, 4th Floor, Washington, DC 20202–4160.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Michelle Coon, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, 4th Floor, Washington, DC 20202–4160. Telephone: (202) 245–6689. Email: *michelle.coon@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:

Background: On December 27, 2018, the Department published in the **Federal Register** a request for public comments on the proposed updates to the Classification of Instructional Programs (83 FR 66687). This request provided a 60-day period, from December 27, 2018, to February 25, 2019, for members of the public to review and comment on the changes. However, due to the lapse in Federal funding, there was a partial government shut-down from December 22, 2018, to January 25, 2019, which impacted several Federal agencies that would be affected by the proposed changes to the 2020 CIP. To account for this, the Department is reopening the public comment period until March 26, 2019. The Department must now receive your comments submitted through the Federal eRulemaking Portal on or before 11:59 p.m., Eastern Time, March 26, 2019, hand delivered on or before 5:00 p.m., Eastern Time, March 26, 2019, or postmarked on or before March 26, 2019, if delivered by postal mail or commercial delivery.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**.You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department

published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schneider,

Director, Institute of Education Sciences.

[FR Doc. 2019–03701 Filed 2–28–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2001–020, ER11–4386–001, ER17–297–001, ER11–4536–000, ER17–2512–000, ER13–1120–001, ER11–3019–001, ER15–2466–000]

Before Commissioners: Neil Chatterjee, Chairman; Cheryl A. LaFleur, Richard Glick, and Bernard L. McNamee; Electric Quarterly Reports, AmericaWide Energy, LLC, Ampex Energy, LLC, Full Circle Renewables, LLC, K&R Energy Partners LLC, Bluesource Energy LLC, Greenbelt Energy, PJLB LLC; Order on Intent To Revoke Market-Based Rate Authority

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2012), and 18 CFR part 35 (2018), require, among other things, that all rates, terms, and conditions for jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports.[1]

2. The Commission requires sellers with market-based rate authorization to file Electric Quarterly Reports summarizing contractual and transaction information related to their market-based power sales as a condition for retaining that authorization.[2] Commission staff's review of the Electric Quarterly Reports indicates that the following seven public utilities with market-based rate authorization have failed to file their Electric Quarterly Reports: AmericaWide Energy, LLC, Ampex Energy, LLC, Full Circle Renewables, LLC, K&R Energy Partners LLC, Bluesource Energy LLC, Greenbelt Energy, and PJLB LLC. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that, [i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[3]

4. The Commission further stated that, [o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[4]

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of market-based rate sellers that failed to submit their Electric Quarterly Reports.[5]

6. Sellers must file Electric Quarterly Reports consistent with the procedures set forth in Order Nos. 2001, 768,[6] and 770.[7] The exact filing dates for Electric Quarterly Reports are prescribed in 18 CFR 35.10b (2018). As noted above, Commission staff's review of the Electric Quarterly Reports for the period up to the third quarter of 2018 identified seven public utilities with market-based rate authorization that failed to file Electric Quarterly Reports. Commission staff contacted or attempted to contact these entities to remind them of their regulatory obligations. Despite these reminders, the public utilities listed in the caption of this order have not met these obligations. Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that any of the above-captioned market-based rate sellers has already filed its Electric Quarterly Reports in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers does not wish to continue having market-based rate authority, it may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff.

The Commission Orders

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility subject to this order fails to make the filings required in this order, the Commission will revoke that public utility's market-based rate authorization and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this

[1] *Revised Public Utility Filing Requirements,* Order No. 2001, 99 FERC 61,107, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, 125 FERC 61,103 (2008). *See also Filing Requirements for Electric Utility Service Agreements,* 155 FERC ¶ 61,280, *order on reh'g and clarification,* 157 FERC ¶ 61,180 (2016) (clarifying Electric Quarterly Reports reporting requirements and updating Data Dictionary).

[2] *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 816, 153 FERC 61,065 (2015), *order on reh'g,* Order No. 816–A, 155 FERC ¶ 61,188 (2016); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, 119 FERC 61,295, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 123 FERC 61,055, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, 125 FERC 61,326 (2008), *order on reh'g,* Order No. 697–C, 127 FERC 61,284 (2009), *order on reh'g,* Order No. 697–D, 130 FERC 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Public Citizen, Inc.* v. *FERC,* 567 U.S. 934 (2012).

[3] Order No. 2001, 99 FERC 61,107.

[4] *Id.* P 223.

[5] *See, e.g., Electric Quarterly Reports,* 82 FR 60,976 (Dec. 26, 2017); *Electric Quarterly Reports,* 80 FR 58,243 (Sep. 28, 2015); *Electric Quarterly Reports,* 79 FR 65,651 (Nov. 5, 2014).

[6] *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,* Order No. 768, 140 FERC 61,232 (2012), *order on reh'g,* Order No. 768–A, 143 FERC ¶ 61,054 (2013), *order on reh'g,* Order No. 768–B, 150 FERC ¶ 61,075 (2015).

[7] *Revisions to Electric Quarterly Report Filing Process,* Order No. 770, 141 FERC 61,120 (2012).

order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Issued: February 25, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03679 Filed 2–28–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–9989–87–ORD]

Board of Scientific Counselors (BOSC) Homeland Security Subcommittee Meeting—March 2019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act the U.S. Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Homeland Security Subcommittee.

DATES: The meeting will be held on Tuesday, March 19, 2019, from 3:00 p.m. to 5:00 p.m. All times noted are Eastern Time. The meeting may adjourn early if all business is finished. Attendees should register by March 18, 2019. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

ADDRESSES: The meeting will be a conference call and the number will be provided following registration at *https://www.eventbrite.com/e/us-epa-bosc-homeland-security-subcommittee-teleconference-tickets-53965523333.*

Submit your comments to Docket ID No. EPA–HQ–ORD–2015–0765 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0765.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2015–0765.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC) Homeland Security Subcommittee Docket, Mail Code: 2822T, 1301 Constitution Ave. NW, Washington, DC 20004, Attention Docket ID No. EPA–HQ–ORD–2015–0765.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, William Jefferson Clinton West Building, 1301 Constitution Ave. NW, Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2015–0765. *Note:* this is not a mailing address. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Board of Scientific Counselors (BOSC) Homeland Security Subcommittee Docket, EPA/DC, William Jefferson Clinton West Building, Room 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 ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Tom Tracy, Mail Code 8104R, Office of Science Policy, Office of Research and Development, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; via phone/voice mail at: (202) 564–6518; via fax at: (202) 565–2911; or via email at: *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information: The meeting is open to the public. Any member of the public interested in receiving a draft agenda, attending the meeting, or making comments at the meeting may contact Tom Tracy, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, anyone making an oral presentation will be limited to a total of three minutes. All attendees must register online at *https://www.eventbrite.com/e/us-epa-bosc-homeland-security-subcommittee-teleconference-tickets-53965523333* by March 18, 2019. Proposed agenda items for the meeting include but not limited to the following: Review of charge questions, draft subcommittee report and Subcommittee discussion.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Tom Tracy at (202) 564–6518 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: February 12, 2019.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2019–03561 Filed 2–28–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9043–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 02/18/2019 Through 02/22/2019

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*.

EIS No. 20190017, Final, GSA, CA, Otay Mesa Land Port of Entry Modernization and Expansion, *Review Period Ends:* 04/01/2019, *Contact:* Osmahn Kadri 415–522–3617.

EIS No. 20190018, Draft, USACE, AK, Pebble Mine, *Comment Period Ends:* 05/31/2019, *Contact:* Shane McCoy 907–753–2715.

EIS No. 20190020, Final, USFS, CA, Exchequer Restoration Project, *Review Period Ends:* 04/01/2019, *Contact:* Elaine Locke 559–855–5355.

Amended Notices

EIS No. 20180284, Draft Supplement, USFS, MT, Stonewall Vegetation Project, *Comment Period Ends:* 03/25/2019, *Contact:* Laura Conway 406–791–7739, Revision to FR Notice Published 11/30/2018; Extending the Comment Period from 01/14/2019 to 03/25/2019.

Dated: February 26, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–03656 Filed 2–28–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Exposure Draft of a Proposed Federal Financial Accounting Technical Release (TR), Conforming Amendments to Technical Releases for SFFAS 54, Leases: An Amendment of SFFAS 5, Accounting for Liabilities of the Federal Government and SFFAS 6, Accounting for Property, Plant, and Equipment

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released an exposure draft of a proposed Federal Financial Accounting Technical Release (TR) titled *Conforming Amendments to Technical Releases for SFFAS 54, Leases: An Amendment of SFFAS 5, Accounting for Liabilities of the Federal Government and SFFAS 6, Accounting for Property, Plant, and Equipment,* for public comment.

The proposed TR is available on the FASAB website at *https://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft and to provide the reasons for their positions. Written comments are requested by April 1, 2019, and should be sent to *fasab@fasab.gov* or Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: February 14, 2019.

Wendy M. Payne,

Executive Director.

[FR Doc. 2019–03702 Filed 2–28–19; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Exposure Draft of a Proposed Statement of Federal Financial Accounting Standards (SFFAS), Omnibus Amendments: Rescinding Statement of Federal Financial Accounting Standards 8 And Amending Statements of Federal Financial Accounting Standards 5, 6, And 49

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft of a proposed Statement of Federal Financial Accounting Standards (SFFAS) titled *Omnibus Amendments: Rescinding Statement Of Federal Financial Accounting Standards 8 And Amending Statements Of Federal Financial Accounting Standards 5, 6, And 49.*

The exposure draft is available on the FASAB website at *https://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by April 23, 2019, and should be sent to *fasab@fasab.gov* or Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: February 22, 2019.

Wendy M. Payne,

Executive Director.

[FR Doc. 2019–03704 Filed 2–28–19; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1184]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 30, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1184.

Title: Sections 1.946(d), 27.10(d), 27.12, 27.14 and 27.17, Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915–1920 MHz and 1995–2000 MHz Bands—R&O, FCC 13–88

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1 respondent; 352 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and at the end of the license term (2022) for incumbent licensees.

Obligation to Respond: Statutory authority for this collection are contained in sections 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 310, 1404, and 145.

Total Annual Burden: 352 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On June 27, 2013, the FCC adopted: *Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915–1920 MHz and 1995–2000 MHz Bands,* WT Docket 12–357, Report and Order, 28 FCC Rcd 9483 (2013) (*H Block R&O*). The *H Block R&O* adopted service rules for the H Block and makes available 10 MHz of paired spectrum for flexible use in accordance with the Middle Class Tax Relief and Job Creation Act of 2012. The *H Block R&O* contained the following information collection requirements which have already been approved by OMB.

For the purpose of this collection, a winning bidder of H Block spectrum must comply with each of the following rule sections:

(a) Section 1.946(d) requires H Block licensees to file a construction notification and certify that they have met the applicable performance benchmarks.

(b) Section 27.10(d) requires an H Block licensee to notify the Commission within 30 days if it changes, or adds to, the carrier status on its license.

(c) Section 27.12 requires H Block licensees to comply with certain eligibility reporting requirements.

(d) Section 27.14 requires H Block licensees to file license renewal applications. Included in the application should be a detailed description of: (1) The level and quality of service provided by the applicant; (2) the date service commenced; (3) whether service was ever interrupted; (4) the duration of any interruption or outage; (5) the extent to which service is provided to rural areas; (6) the extent to which service is provided to qualifying Tribal lands; and (7) any other factors associated with the level of service to the public.

(e) Section 27.17 requires H Block licensees to notify the Commission within ten days if they permanently discontinue service by filing FCC Form 601 or 605 and requesting license cancellation.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–03634 Filed 2–28–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1155]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 30, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

OMB Control Number: 3060–1155.

Title: Sections 15.713, 15.714, 15.715 15.717, 27.1320, TV White Space Broadcast Bands.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,510 respondents; 3,500 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i), 302, 303(c), 303(f), and 307 of the Communications Act of 1934, as amended.

Total Annual Burden: 7,000 hours.

Total Annual Cost: $151,000.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. Respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is submitting this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance.

On July 13, 2017, the Commission adopted an Order on Reconsideration in ET Docket Nos. 14–165 and 14–166, FCC 17–95, that addressed wireless microphone issues (2017 Wireless Microphone Order). Because the date the Commission specified in the 2015 White Spaces R&O for ending registration of unlicensed wireless microphones in the white space database had passed with the release of the Channel Reassignment Public Notice on April 13, 2017, the Order removed and reserved Section 15.713(j)(9) that had previously allowed such registrations.

The white space rules as amended by the 2015 White Spaces R&O require that each white space database administrator shall:

(a) Maintain a database that contains the information described in § 15.713 of the rules. The database must include information on protected entities and services, including TV stations, Broadcast Auxiliary Services, Private Land Mobile and Commercial Radio Service operations, part 74 Low Power Auxiliary Stations such as wireless microphones, the locations where part 27 600 MHz service licensees have commenced operation, and the locations of health care facilities that use WMTS equipment operating on channel 37. (Section 15.715(a));

(b) Establish a process for acquiring and storing in the database necessary and appropriate information from the Commission's databases and synchronizing the database with the current Commission databases at least once a week to include newly licensed facilities or any changes to licensed facilities (Section 15.715(b));

(c) Establish a process for registering fixed white space devices and registering and including in the database those facilities entitled to protection but not contained in a Commission database, including Multi-channel Video Programming Distributor (MVPD) receive sites. The database administrators must establish procedures to allow part 27 600 MHz service licensees to upload, modify and replace registration information for areas where they have commenced operations; allow health care facilities to register the locations of facilities where they operate WMTS networks on channel 37; and to allow unlicensed wireless microphone users in the 600 MHz band to register with the database and to provide lists of channels available for wireless microphones at a given location (Sections 15.715(n), (p) and (q)). Database administrators must remove from the database the registrations of fixed white space devices that have not checked the database for at least three months to update their channel lists (Section 15.715(o));

(d) Establish a process for registering facilities where part 74 low power auxiliary devices are used on a regular basis (Sections 15.713(j)(8) and 15.715(d));

(e) Provide accurate automated information regarding available channels to fixed and personal/portable white space devices that submit to the database the information required under § 15.713(e), (g) and (h) based on the geographic location of the device; and provide accurate automated information regarding available channels to fixed and Mode II devices requesting information regarding available channels for Mode I devices. Database administrators may allow prospective operators of white space devices to query the database and determine if there are vacant channels at a particular location (Section 15.715(e));

(f) Establish protocols and procedures to ensure that all automated communications and interactions between the database and white space devices are accurate and secure and that unauthorized parties cannot access or alter the database or the information regarding available channels sent to a white space device consistent with the provisions of Section 15.713(l) (Section 15.715(f));

(g) Make database services available to all unlicensed white space device users on a non-discriminatory basis (Section 15.715(g));

(h) Provide service for a five-year term. This term can be renewed at the Commission's discretion (Section 15.715(h));

(i) Respond in a timely manner to verify, correct and/or remove, as appropriate, data in the event that the Commission or a party brings a claim of inaccuracies in the database to the attention of the administrator. This requirement applies only to information that the Commission requires to be stored in the database (Section 15.715(i));

(j) Transfer the database, along with the IP addresses and URLs used to access the database and data for registered fixed and personal/portable white space devices, to another designated entity in the event it does not continue as the database administrator at the end of its term (Section 15.715(j));

(k) The database must have functionality such that upon request from the Commission it can indicate that no channels are available when queried by a specific white space devices or model of white space device (Section 15.715(k));

(l) If more than one database is developed, the database administrators must cooperate to develop a standardized process for providing on a

daily basis or more often, as appropriate the data collected for the facilities listed in § 15.713(b)(2) to all other white space databases to ensure consistency in the records of protected facilities (Section 15.715(l));

(m) The database administrator may charge a fee for provision of lists of available channels to fixed and personal/portable devices and for registering fixed devices. This provision applies to devices that operate in the TV bands, 600 MHz service band, and the 600 MHz guard bands and duplex gap. A white space database administrator may also charge a fee for provision of lists of available channels to wireless microphone users. (Section 15.714).

To receive interference protection, 600 MHz licensees must notify one of the white space database administrators of the areas where they have commenced operation pursuant to §§ 15.713(j)(10) and 15.715(n) of this chapter (Section 27.1320).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–03633 Filed 2–28–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0719]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before April 1, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0719.

Title: Quarterly Report of Local Exchange Carriers Listing Payphone Automatic Number Identifications (ANIs).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 400 respondents; 1,600 responses.

Estimated Time per Response: 3.5 hours (8 hours for the initial submission; 2 hours per subsequent submission—for an average of 3.5 hours per response).

Frequency of Response: Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226 and 276 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,600 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the respondents wish confidential treatment of their information, they may request confidential treatment under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission adopted rules and policies governing the payphone industry under section 276(b)(1)(A) of the Telecommunications Act of 1996 (the Act) and established ''a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call.'' Pursuant to this mandate, and as required by section 64.1310(d) of the Commission's rules, Local Exchange Carriers (LECs) must provide to carriers required to pay compensation pursuant

to section 64.1300(a), a quarterly report listing payphone ANIs.

Without provision of this report, resolution of disputed ANIs would be rendered very difficult. Carriers would not be able to discern which ANIs pertain to payphones and therefore would not be able to ascertain which dial-around calls were originated by payphones for compensation purposes. There would be no way to guard against possible fraud. Without this collection, lengthy investigations would be necessary to verify claims. The report allows carriers to determine which dial-around calls are made from payphones. The information must be provided to third parties. The requirement would be used to ensure that LECs and the carriers required to pay compensation pursuant to 47 CFR 64.1300(a) of the Commission's rules comply with their obligations under the Telecommunications Act of 1996.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–03636 Filed 2–28–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. 0–AR–5354]

Notice of Opportunity To Submit Amici Curiae Briefs in an Arbitration Appeal Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to submit briefs as amici curiae on a significant issue arising in a case pending before the Authority. The Authority is considering this case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, and its regulations on the review of arbitration awards.

DATES: Briefs must be received on or before April 1, 2019.

ADDRESSES: Mail or deliver briefs to Emily Sloop, Chief, Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street NW, Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Emily Sloop, Chief, Case Intake and Publication, Federal Labor Relations Authority, (202) 218–7740.

SUPPLEMENTARY INFORMATION: The Authority is considering Case No. 0–AR–5354 pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (the Statute), and its regulations on the review of arbitration awards, set forth at 5 CFR part 2425. The issues include whether there is a need for the Authority to reconsider its nearly exclusive reliance on the factors or criteria found in *Allen* v. *U.S. Postal Service,* 2 M.S.P.R. 420 (1980), when considering whether an award of attorney fees is in the ''interest of justice'' (5 U.S.C. 7701(g)), and then, if reconsideration is warranted, what the factors or criteria should be, as adapted for the federal collective-bargaining context. As this matter is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amici briefs addressing this matter.

In Case No. 0–AR–5354, Arbitrator Fred K. Blackard sustained a grievance and found that the Agency, U.S. Department of Veterans Affairs, Michael E. DeBakey Medical Center, Houston, Texas, had violated an article of its collective bargaining agreement with the Union, American Federation of Government Employees (AFGE), Local 1633. Arbitrator Blackard awarded back pay to the grievants but denied attorney fees to the Union, finding no provision in the parties' collective bargaining agreement provided attorney fees to a party prevailing at arbitration. Both the Agency and the Union filed timely exceptions with the Authority on different grounds. Those exceptions are currently pending before the Authority. A summary of the case follows.

1. Background and Award

The Union filed a grievance seeking environmental differential pay on behalf of housekeepers who worked at the Agency's medical center. The parties submitted the matter to arbitration. The Union argued that the housekeepers were entitled to environmental differential pay under federal law and the parties' collective-bargaining agreement because they worked in close proximity to hazardous micro-organisms. The Agency argued that the housekeepers were not entitled to environmental differential pay because their duties do not meet the standards described under 5 U.S.C. 5343(c)(4); 5 CFR part 532, subpart E, Appendix A; and the parties' agreement. On January 24, 2018, the Arbitrator issued an award finding that the housekeepers worked in sufficient proximity to micro-organisms within the meaning of Appendix A, thereby entitling them to environmental differential pay. Accordingly, the Arbitrator sustained the grievance, and awarded backpay, but denied the Union's request for attorney fees because attorney fees were not authorized under the parties' agreement.

2. Exceptions as Filed

In addition to the exceptions filed by the Agency, an exception was filed by the Union to the award. The Union has argued that the Arbitrator's determination, that he lacked the authority to award attorney fees because the parties' collective-bargaining agreement did not provide for them, is deficient. The Union requests that the Authority find this determination contrary to law, as contravening the Back Pay Act, 5 U.S.C. 5596, and the Union requests that the Authority remand the case to the parties, to resubmit to the Arbitrator, absent settlement, the issue of whether attorney fees are warranted.

3. Questions on Which Briefs Are Solicited

In 1984, the Authority first reviewed the issue of entitlement to attorney fees and then adopted the ''interest of justice standards'' (later called alternatively ''factors'' or ''criteria'') of the Merit Systems Protection Board (MSPB) 1980 decision in *Allen* v. *U.S. Postal Service.* In general, the Authority has since held that a threshold requirement for entitlement to attorney fees under the Back Pay Act is a finding that the grievant has been affected by an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of the grievant's pay, allowances, or differentials. Further, the award of attorney fees must be in conjunction with an award of backpay to the grievant on correction of the personnel action, that the award of attorney fees must be reasonable and related to the personnel action, and that the award of attorney fees must be in accordance with the standards established under 5 U.S.C. 7701(g). Section 7701(g) in turn prescribes that for an employee to be eligible for an award of attorney fees, the employee must be the prevailing party. Section 7701(g)(1), which applies to all cases except those involving discrimination, requires that an award of attorney fees must be warranted ''in the interest of justice,'' that the amount must be reasonable, and that the fees must have been incurred by the employee.

The Authority has referred to and applied the case law of the MSPB on

attorney fees since 1984. As early as 2016, the Authority has publicly questioned its continued use of the *Allen* criteria and acknowledged that it may be more appropriate to develop criteria to assess attorney fees that are more applicable to the federal collective-bargaining and grievance-arbitration experience. *See U.S. DHS, U.S. CBP,* 70 FLRA 73, 76 (2016).

Because the Authority has not directly addressed the issue of appropriate criteria for attorney fees, as reflecting federal collective-bargaining and grievance-arbitration actions, the Authority is providing an opportunity for the parties and other interested persons to file briefs addressing the following questions:

Should the Authority reconsider its nearly exclusive reliance upon MSPB case law (*Allen*) and the MSPB's interpretation of 5 U.S.C. 7701(g) for the purpose of determining whether attorney fees are warranted in the federal collective bargaining context? If so, why? If not, why not?

What factors should the Authority consider when determining whether the statutory criteria for attorney fees are met in the federal collective bargaining context? What factors should the Authority not consider? For example, how should the Authority determine who is a ''prevailing party'' in the context of the interpretation of a collective-bargaining agreement?

In answering these questions, the parties and other interested persons should address: (1) The wording of the Statute and the Back Pay Act; (2) any principles of statutory construction; (3) any legislative history regarding 5 U.S.C. 7701(g) and any other relevant provisions of the Statute or other applicable laws; and (4) the practical impact of suggested criteria that should be considered in light of the Statute's requirement that its provisions be interpreted in a manner consistent with the requirement of an effective and efficient government.

4. Required Format for Briefs

All briefs shall be captioned ''*AFGE, Local 1633 and the U.S. Department of Veterans Affairs, Michael E. DeBakey Medical Center, Houston, Texas,* Case No. 0–AR–5354.'' Briefs shall contain separate, numbered headings for each issue covered. Interested persons must submit an original and four (4) copies of each amicus brief, with any enclosures, on 8½ x 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's Regulations showing service of one copy of the brief on all counsel of record or other designated representatives, 5 CFR 2429.27(a) and (c). Accordingly, briefs must be served on: Stephen Jones, Attorney, American Federation of Government Employees, Local 1633, 2002 Holcombe, Houston, TX 77030, (214) 796–0011, *Stephen.jones@sejpc.com;* Thomas Herpin, Attorney, U.S. Department of Veterans Affairs, Michael E. DeBakey Medical Center, Houston, Texas, 6900 Alameda (02), Houston, TX 77079, (713) 383–2769, *Thomas.Herpin@va.gov;* Fred K. Blackard, Arbitrator, 10713 Marsha Lane, Houston, TX 77024, *FKblackard@aol.com.*

Dissenting View of Member Ernie DuBester

I have previously suggested that the FLRA reconsider the *Allen Factors.* However, I do not think that this is an ideal case for doing so. In my view, the greatest deficiencies of the *Allen Factors*—as applied to the types of cases the FLRA is called upon to review—is that they are unnecessarily cumbersome and impractical for both practitioners and arbitrators. This case's disposition does not even require application of the *Allen Factors.* Accordingly, I do not think it is especially instructive.

Dated: February 22, 2019.

Emily Sloop,

Chief, Case Intake and Publication.

[FR Doc. 2019–03429 Filed 2–28–19; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Privacy Act of 1974; System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of a New System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is given that the Board of Governors of the Federal Reserve System (Board) proposes to establish a new system of records entitled, BGFRS–41 ''FRB—Ethics Program Records.''

DATES: Comments must be received on or before April 1, 2019. This new system of records will become effective April 1, 2019, without further notice, unless comments dictate otherwise.

The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 30-day period prior to publication in the **Federal Register** in which to review the system and to provide any comments to the agency. The public is then given a 30-day period in which to comment, in accordance with 5 U.S.C. 552a(e)(4) and (11).

ADDRESSES: You may submit comments, identified by *BGFRS–41 ''FRB—Ethics Program Records,''* by any of the following methods:

- *Agency website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include SORN name and number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons, or to remove personally identifiable information at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: David B. Husband, Senior Attorney, (202) 530–6270, or *david.b.husband@frb.gov;* Alye S. Foster, Assistant General Counsel, (202) 452–5289, or *alye.s.foster@frb.gov;* Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The new system of records maintains information regarding prospective, current, and former Board employees who seek or receive advice from Board ethics officials. These individuals may seek or receive advice from Board ethics officials regarding compliance with criminal conflicts of interest laws, the Ethics in Government Act, the Standards of Ethical Conduct for Employees of the Executive Branch, the Board's supplemental ethics regulations, and other relevant ethics-related laws or policies.

SYSTEM NAME AND NUMBER:

BGFRS–41 ''FRB—Ethics Program Records.''

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Board maintains the records at the Board's central office, located at: Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Paper records are stored in locked file cabinets and electronic records are stored on secure servers.

SYSTEM MANAGER(S):

Cary Williams, Designated Agency Ethics Official, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551, (202) 452–3295, or *cary.williams@frb.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 244; Ethics in Government Act of 1978, 5 U.S.C. app; Ethics Reform Act of 1989, Public Law 101–194; 5 CFR 2638.104(c)(2).

PURPOSE(S) OF THE SYSTEM:

This new system of records enables the Board to administer the Board's Ethics Program consistent with applicable requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system consist of prospective, current, and former Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system covers records memorializing ethics inquiries regarding prospective, current, and former employees. For example, the records may contain, without limitation: The prospective, current, or former employee's name, address, telephone number, and email address; ethics advice (including waivers); compensated outside employment approvals (*i.e.,* employment outside of or unrelated to the employee's official Board duties); and information in support of Public Financial Disclosure Reports and Confidential Financial Disclosure Reports that is not already covered by the government-wide system of record notices ''Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records (OGE/GOVT–1)'' and ''Confidential Statements of Employment and Financial Interests (OGE/GOVT–2).'' In addition, the system may also contain records relating to the employment or financial interests of the family members of prospective, current, or former Board employees to the extent such information pertains to an ethics inquiry regarding such employees.

RECORD SOURCE CATEGORIES:

The primary source of the information is the prospective, current, or former employee. Other sources may include, but are not limited to, the employee's supervisors, attorneys, representatives, or family members, Office of Inspector General staff, and other Board staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

General routine uses, A, B, C, D, E, F, G, H, I, and J apply to this system. These general routine uses are located at *https://www.federalreserve.gov/files/SORN-page-general-routine-uses-of-board-systems-of-records.pdf* and are published in the **Federal Register** at 83 FR 43872 at 43873–74 (August 28, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records in this system are stored in locked file cabinets with access limited to staff with a need to know. Electronic records are stored on a secure server with access limited to staff with a need to know.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Paper and electronic records can be retrieved by name or other personal identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention period for the records in this system is six years or when no longer needed for an active investigation, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Board staff are restricted to the data that is required in the performance of their official duties. Paper records are stored in locked file cabinets and electronic records are stored on a secure server, with access limited to Board staff with a need to know.

RECORD ACCESS PROCEDURES:

The Privacy Act allows individuals the right to access records maintained about them in a Board system of records. Your request for access must: (1) Contain a statement that the request is made pursuant to the Privacy Act of 1974; (2) provide either the name of the Board system of records expected to contain the record requested or a concise description of the system of records; (3) provide the information necessary to verify your identity; and (4) provide any other information that may assist in the rapid identification of the record you seek.

Current or former Board employees may make a request for access by contacting the Board office that maintains the record. The Board handles all Privacy Act requests as both a Privacy Act request and as a Freedom of Information Act request. The Board does not charge fees to a requestor seeking to access or amend his/her Privacy Act records.

You may submit your Privacy Act request to the—Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

You may also submit your Privacy Act request electronically through the Board's FOIA ''Electronic Request Form'' located here: *https://www.federalreserve.gov/secure/forms/efoiaform.aspx.*

CONTESTING RECORD PROCEDURES:

The Privacy Act allows individuals to seek amendment of information that is erroneous, irrelevant, untimely, or incomplete and is maintained in a system of records that pertains to them. To request an amendment to your record, you should clearly mark the request as a ''Privacy Act Amendment Request.'' You have the burden of proof for demonstrating the appropriateness of the requested amendment and you must provide relevant and convincing evidence in support of your request.

Your request for amendment must: (1) Provide the name of the specific Board system of records containing the record you seek to amend; (2) identify the specific portion of the record you seek to amend; (3) describe the nature of and reasons for each requested amendment; (4) explain why you believe the record is not accurate, relevant, timely, or complete; and (5) unless you have already done so in a related Privacy Act request for access or amendment, provide the necessary information to verify your identity.

NOTIFICATION PROCEDURES:

Same as ''Access procedures'' above. You may also follow this procedure in order to request an accounting of previous disclosures of records pertaining to you as provided for by 5 U.S.C. 552a(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Board of Governors of the Federal Reserve System, February 26, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–03687 Filed 2–28–19; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2018–07; Docket No. 2018–0002; Sequence No. 21]

Redesignation of Federal Building

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the redesignation of a Federal building per the Federal Management Regulation.

DATES: This bulletin expires September 3, 2019. The building redesignation remains in effect until canceled or superseded by another bulletin.

FOR FURTHER INFORMATION CONTACT: General Services Administration, Public Buildings Service (PBS), Office of Portfolio Management, Attn: Chandra Kelley, 77 Forsyth Street SW, Atlanta, GA 30303, at 404–562–2763, or by email at *chandra.kelley@gsa.gov.*

SUPPLEMENTARY INFORMATION:

This bulletin announces the redesignation of a Federal building. Public Law 115–141, Section 632, dated January 3, 2017, designated the Jackson Federal Courthouse, located at 501 East Court Street in Jackson, Mississippi, as the ''Thad Cochran United States Courthouse.''

Dated: February 22, 2019.

Emily W. Murphy,

Administrator of General Services.

GENERAL SERVICES ADMINISTRATION

REDESIGNATION OF FEDERAL BUILDING

PBS-2018-07

TO: Heads of Federal Agencies.

SUBJECT: Redesignation of Federal Building.

1. *What is the purpose of this bulletin*? This bulletin announces the redesignation of a Federal building.

2. *When does this bulletin expire*? This bulletin announcement expires September 3, 2019. The building designation remains in effect until canceled or superseded by another bulletin.

3. *Redesignation*. The former and new name of the redesignated building is as follows:

Former name	New name
Jackson Federal Courthouse, 501 East Court Street in Jackson, Mississippi, 39201.	Thad Cochran United States Courthouse, 501 East Court Street in Jackson, Mississippi, 39201.

4. *Who should we contact for further information regarding redesignation of this Federal building*? U.S. General Services Administration, Public Buildings Service, Office of Portfolio Management, Attn: Chandra Kelley, 77 Forsyth Street, SW, Atlanta, GA 30303, telephone number: 404-562-2763, or e-mail at *chandra.kelley@gsa.gov.*

Dated: February 22, 2019.

Emily W. Murphy,

Administrator of General Services.

[FR Doc. 2019–03711 Filed 2–28–19; 8:45 am]

BILLING CODE 6820–Y1–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Board of Scientific Counselors (BSC), National Institute for Occupational Safety and Health (NIOSH)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the BSC, NIOSH. The BSC, NIOSH consists of 15 experts in fields associated with occupational safety and health.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of occupational medicine, occupational nursing, industrial hygiene, occupational safety and health engineering, toxicology, chemistry, safety and health education, ergonomics, epidemiology, biostatistics, and psychology. Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of the BSC, NIOSH objectives *http://www.cdc.gov/niosh/BSC/default.html.*

DATES: Nominations for membership on the BSC, NIOSH must be received no later than April 30, 2019. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to NIOSH Docket 278, c/o Pauline Benjamin, Committee Management Specialist, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, MS: E–20, Atlanta, Georgia 30329 or emailed (recommended) to *nioshdocket@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Alberto Garcia, M.S., Designated Federal Officer, CDC/NIOSH, 1090 Tusculum Ave. MS R–5, Cincinnati, OH 45226, telephone (513) 841–4596; *agarcia1@cdc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees (SGEs), requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for BSC, NIOSH membership each year, and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in January, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. SGE Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- Cover letter, including a description of the candidate qualifications and why the candidate would be a good fit for the BSC.

▪ At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–03666 Filed 2–28–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3376–N]

Medicare Program; Solicitation of Independent Accrediting Organizations To Participate in the Home Infusion Therapy Supplier Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice informs national accrediting organizations that accredit home infusion therapy suppliers of an opportunity to submit applications to participate in the home infusion therapy supplier accreditation program. This notice contains information on how to apply for CMS approval.

DATES: Complete applications will be considered for the January 1, 2021 designation deadline if received at the address, provided in the **ADDRESSES** section of this notice, by 5 p.m. eastern daylight time (e.d.t.) on February 1, 2020.

ADDRESSES: Applications should be sent to: Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244. Mail stop C2–21–16, Attention: Christina Mister-Ward.

FOR FURTHER INFORMATION CONTACT: Christina Mister-Ward (410) 786–2441.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(iii)(1) of the Social Security Act (''the Act'') defines ''home infusion therapy'' as the items and services described furnished by a qualified home infusion therapy supplier which are furnished in the individual's home. The individual must be—

• Under the care of an applicable provider; and

• With respect to whom a plan prescribing the type, amount, and duration of infusion therapy services that are to be furnished such individual has been established by a physician and is periodically reviewed by a physician in coordination with the furnishing of home infusion drugs under part B.

According to section 1861(iii)(3)(A) of the Act, ''Applicable provider'' means a physician, a nurse practitioner, or a physician assistant. In accordance with section 1834(u)(5) of the Act, we defined ''National accrediting organization'' at 42 CFR 488.1005 as an organization that accredits provider or supplier entities under a specific program and whose accredited provider or supplier entities under each program are widely dispersed geographically across the United States. In addition, the specific program is active, fully implemented, and operational.

In the November 13, 2018 **Federal Register** (83 FR 56406),we published a final rule titled, ''Medicare and Medicaid Programs; CY 2019 Home Health Prospective Payment System Rate Update and CY 2020 Case-Mix Adjustment Methodology Refinements; Home Health Value-Based Purchasing Model; Home Health Quality Reporting Requirements; Home Infusion Therapy Requirements; and Training Requirements for Surveyors of National Accrediting Organizations.'' The November 2018 final rule implemented health and safety standards that home infusion therapy suppliers must meet; the temporary transitional payments for home infusion therapy services for CYs 2019; and an approval and oversight process for accrediting organizations (AOs) that accredit home infusion therapy suppliers. For more detailed information on the home therapy organization accreditation requirements see the November 2018 final rule (83 FR 56563 through 56584).

Section 1861(iii)(3)(D)(i)(III) of the Act, as added by section 5012(b) of the 21st Century Cures Act, requires that a home infusion therapy supplier be accredited by an AO designated by the Secretary in accordance with section 1834(u)(5) of the Act. Section 1834(u)(5)(A) of the Act identifies factors for designating AOs and modifying the list of designated AOs. These statutory factors are as follows:

• The ability of the organization to conduct timely reviews of accreditation applications.

• The ability of the organization take into account the capacities of suppliers located in a rural area (as defined in section 1886(d)(2)(D) of the Act).

• Whether the organization has established reasonable fees to be charged to suppliers applying for accreditation.

• Such other factors as the Secretary determines appropriate.

Section 1834(u)(5)(B) of the Act requires the Secretary to designate AOs to accredit home infusion therapy suppliers furnishing home infusion therapy not later than January 1, 2021.

II. Provisions of the Notice

This notice solicits applications from AOs with the ability to accredit home infusion therapy suppliers.

A. Eligible Organizations

An accreditation organization that can show evidence of the ability to accredit qualified home infusion therapy suppliers as defined in section 1861(iii)(3)(D)(i) of the Act are eligible to apply for approval as a designated accreditation organization.

To be considered for approval as a Medicare-designated home infusion therapy AO under 42 CFR part 488, subpart L (§§ 488.1000 through 488.1050), an accrediting organization must meet the following requirements:

• The AO must have a home infusion therapy accreditation program that it separates and distinguishes from any of its other accreditation programs (if applicable).

• The AO must have home infusion therapy accreditation standards that meet or exceed the Medicare home infusion therapy health and safety standards codified at §§ 486.500 through 486.525 of our regulations.

B. Application Requirements

To be considered for approval by Medicare as a home infusion therapy accrediting organization, an accrediting organization must submit an application to CMS requesting approval of its home infusion therapy accreditation program. The home infusion therapy accrediting organization's application must contain all of the following information to demonstrate that the AO's home infusion therapy accreditation program meets or exceeds the applicable Medicare requirements:

• Documentation to demonstrate that they meet the definition of a ''national

accrediting organization'' as required by 42 CFR 488.1010(a)(1).

• The Medicare provider or supplier type for which the organization is requesting approval or re-approval (§ 488.1010(a)(2)).

• Documentation that demonstrates the home infusion therapy accrediting organization's ability to take into account the capacities of rural home infusion therapy suppliers (as required by section 1834(u)(5)(A)(ii) of the Act and 42 CFR 488.1010(a)(3)).

• Information that demonstrates the home infusion therapy accrediting organization's knowledge, expertise, and experience in home infusion therapy (see § 488.1010(a)(4)).

• A detailed crosswalk (in table format) that identifies, for each of the applicable Medicare requirements, the exact language of the organization's comparable accreditation requirements and standards (see § 488.1010(a)(5)).

• A detailed description of the home infusion therapy accrediting organization's survey processes to confirm that a home infusion therapy supplier's processes are comparable to those of Medicare (see § 488.1010(a)(6)). This description must include all of the following:

++ The types and frequency of surveys performed, and a rationale for which accreditation requirements will be evaluated via onsite surveys and which will be evaluated via offsite audits, or other strategies for ensuring accredited home infusion therapy suppliers maintain adherence to the home infusion therapy accreditation program requirements, including an explanation of how the accrediting organization will maintain the schedule it proposes (§ 488.1010(a)(6)(i)).

++ Copies of the home infusion therapy accrediting organizations survey and audit forms, guidelines, and instructions to surveyors (§ 488.1010(a)(6)(ii)).

++ Documentation demonstrating that the home infusion therapy accrediting organization's onsite survey or offsite audit reports identify, for each finding of non-compliance with accreditation standards, the comparable Medicare home infusion therapy accreditation requirements, as applicable (§ 488.1010(a)(6)(iii)).

++ A description of the home infusion therapy accrediting organization's accreditation survey review process (§ 488.1010(a)(6)(iv)).

++ A description of the home infusion therapy accrediting organization's procedures and timelines for notifying a surveyed or audited home infusion therapy supplier of non-compliance with the home infusion therapy accreditation program's standards (§ 488.1010(a)(6)(v)).

++ A description of the home infusion therapy accrediting organization's procedures and timelines for monitoring the home infusion therapy supplier's correction of identified non-compliance with the accreditation program's standards (§ 488.1010(a)(6)(vi)).

++ The ability of the home infusion therapy accrediting organization to conduct timely reviews of accreditation applications (§ 488.1010(a)(6)(vii)).

++ A statement acknowledging that, as a condition for CMS approval of a national accrediting organization's accreditation program, the home infusion therapy accrediting organization agrees to provide CMS with information extracted from each home infusion therapy accreditation onsite survey, offsite audit or other evaluation strategies as part of its data submissions required under § 488.1010(a)(19), and, upon request from CMS, a copy of the most recent accreditation onsite survey, offsite audit, or other evaluation strategy together with any other information related to the survey as CMS may require (including corrective action plans) (§ 488.1010(a)(6)(viii)).

++ A statement acknowledging that the home infusion therapy accrediting organization will provide timely notification to CMS when an accreditation survey or complaint investigation identifies an immediate jeopardy as that term is defined at § 488.1005. Using the format specified by CMS, the home infusion therapy accrediting organization must notify CMS within 2 business days from the date the accrediting organization identifies the immediate jeopardy (§ 488.1010(a)(6)(ix)).

• Procedures to ensure either of the following:

++ Unannounced onsite surveys, as appropriate, will be conducted periodically, including procedures that protect against unannounced surveys becoming known to the provider or supplier in advance of the visit (§ 488.1010(a)(7)(i)).

++ Offsite survey audits are performed to evaluate the quality of services provided which may be followed up with periodic onsite visits (§ 488.1010(a)(7)(ii)).

• The criteria for determining the size and composition of the home infusion therapy accrediting organization's survey, audit and other evaluation strategy teams for individual supplier onsite surveys. The home infusion therapy accrediting organization's criteria should include, but not be limited to the following information:

++ The expected number of individual home infusion therapy supplier locations to be surveyed using an onsite survey (§ 488.1010(a)(8)(i)).

++ The number of home infusion therapy suppliers to be surveyed using off-site audits (§ 488.1010(a)(8)(ii)).

++ A description of other types of home infusion therapy accreditation review activities to be used (§ 488.1010(a)(8)(iii)).

++ The reasons for each type of survey (that is, initial accreditation survey, reaccreditation survey, and complaint survey) (§ 488.1010(a)(8)(iv)).

• The overall adequacy of the number of the home infusion therapy accrediting organization's surveyors, auditors, and other staff available to perform survey related activities, including how the organization will increase the size of the survey, audit, and other evaluation staff to match growth in the number of accredited facilities or programs while maintaining re-accreditation intervals for existing accredited facilities or programs (§ 488.1010(a)(9)).

• Detailed information about the individuals who perform onsite surveys, offsite audits or other strategies for ensuring accredited home infusion therapy suppliers maintain adherence to the home infusion therapy accreditation program requirements, including all of the following information:

++ The number and types of professional and technical staff available for conducting onsite surveys, offsite audits, or other strategies for ensuring accredited home infusion therapy suppliers maintain adherence to the home infusion therapy accreditation program requirements. (§ 488.1010(a)(10)(i)).

++ The education, employment, and experience requirements surveyors an auditors must meet (§ 488.1010(a)(10)(ii)).

++ The content and length of the orientation program (§ 488.1010(a)(10)(iii)).

• The content, frequency and types of in-service training provided to survey and audit personnel (§ 488.1010(a)(11)).

• The evaluation systems used to monitor the performance of individual surveyors, auditors and survey teams (§ 488.1010(a)(12)).

• The home infusion therapy accrediting organization's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys, audits or participate in accreditation decisions (§ 488.1010(a)(13)).

• The policies and procedures used when a home infusion therapy supplier has a dispute regarding survey or audit findings, or an adverse decision (§ 488.1010(a)(14)).

• Procedures for the home infusion therapy supplier to use to notify the home infusion therapy accrediting organization when the accredited home infusion therapy supplier does the either of the following (§ 488.1010(a)(15)):

++ Removes or ceases furnishing services for which they are accredited.

++ Adds services for which they are not accredited.

• The home infusion therapy accrediting organization's procedures for responding to, and investigating complaints against accredited facilities, including policies and procedures regarding referrals, when applicable, to appropriate licensing bodies, ombudsmen offices, and CMS (§ 488.1010(a)(16)).

• A description of the home infusion therapy accrediting organization's accreditation status decision-making process. The home infusion therapy accrediting organization must furnish the following (§ 488.1010(a)(17)):

++ Its process for addressing deficiencies identified with accreditation program requirements, and the procedures used to monitor the correction of deficiencies identified during an accreditation survey and audit process.

++ A description of all types and categories of accreditation decisions associated with the program, including the duration of each of the organization's accreditation decisions.

++ Its policies and procedures for the granting, withholding or removal of accreditation status for facilities that fail to meet the accrediting organization's standards or requirements, assignment of less than full accreditation status or other actions taken by the organization in response to non-compliance with its standards and requirements.

++ A statement acknowledging that the home infusion therapy accrediting organization agrees to notify CMS (in a manner CMS specifies) of any decision to revoke, terminate, or revise the accreditation status of a home infusion therapy supplier, within 3 business days from the date the organization takes an action.

• A list of all currently accredited home infusion therapy suppliers, the type and category of accreditation, currently held by each, and the expiration date for each home infusion therapy supplier's current accreditation (§ 488.1010(a)(18)).

• A schedule of all survey activity (such as onsite surveys, offsite audits and other types if survey strategies) expected to be conducted by the organization during the 6-month period following submission of an initial or renewal application (§ 488.1010(a)(19)).

• A written presentation that demonstrates the organization's ability to furnish CMS with electronic data (§ 488.1010(a)(20)).

• A description of the home infusion therapy accrediting organization's data management and analysis system with respect to its surveys and accreditation decisions, including all of the following (§ 488.1010(a)(21)):

++ A detailed description of how the home infusion therapy accrediting organization uses its data to assure the compliance of its home infusion therapy accreditation program with the Medicare home infusion therapy accreditation program requirements.

++ A written statement acknowledging that the home infusion therapy accrediting organization agrees to submit timely, accurate, and complete data that CMS has determined is both necessary to evaluate the accrediting organization's performance and is not unduly burdensome for the accrediting organization to submit.

++ The organization must submit necessary data according to the instructions and timeframes CMS specifies.

++ Data to be submitted includes the following:

—Accredited home infusion therapy supplier identifying information.

—Survey findings.

—Quality measures.

—Notices of accreditation decisions.

• The three most recent annual audited financial statements of the home infusion therapy accrediting organization that demonstrate that the organization's staffing, funding, and other resources are adequate to perform the required surveys, audits, and related activities to maintain the accreditation program (§ 488.1010(a)(22)).

• A written statement acknowledging that, as a condition for approval, the home infusion therapy accrediting organization agrees to the following (§ 488.1010(a)(23)):

++ *Voluntary termination.* Provide written notification to CMS and all home infusion therapy suppliers accredited under its CMS-approved home infusion therapy accreditation program at least 180 calendar days in advance of the effective date of a decision by the home infusion therapy accrediting organization to voluntarily terminate its CMS-approved home infusion therapy accreditation program and the implications for the suppliers' payment status once their current term of accreditation expires in accordance with the requirements at § 488.1045(a).

++ *Involuntary termination.* Provide written notification to all accredited home infusion therapy suppliers accredited under its CMS-approved home infusion therapy accreditation program no later than 30 calendar days after the notice is published in the **Federal Register** announcing that CMS is withdrawing its approval of its accreditation program and the implications for the home infusion therapy supplier's payment status in accordance with the requirements at § 488.1045(b) once their current term of accreditation expires.

—For both voluntary and involuntary terminations, provide a second written notification to all accredited home infusion therapy suppliers 10 calendar days prior to the organization's accreditation program effective date of termination.

—Notify CMS, in writing (electronically or hard copy), within 2 business days of a deficiency identified in any accredited home infusion therapy supplier from any source where the deficiency poses an immediate jeopardy to the home infusion therapy supplier's beneficiaries or a hazard to the general public.

++ *Summary accreditation activity data and trends.* Provide, on an annual basis, summary accreditation activity data and trends including the following:

—Deficiencies.

—Complaints.

—Terminations.

—Withdrawals.

—Denials.

—Accreditation decisions.

—Other survey-related activities as specified by CMS.

++ *Termination of an accreditation organization.* If CMS terminates a home infusion therapy accrediting organization's approved status, the home infusion therapy accrediting organization must work collaboratively with CMS to direct its accredited home infusion therapy suppliers to the remaining CMS-approved accrediting organizations within a reasonable period of time.

++ *Notification of proposed changes.* Notify CMS at least 60 days in advance of the implementation date of any significant proposed changes in its CMS-approved home infusion therapy accreditation program and that it agrees not to implement the proposed changes without prior written notice of continued program approval from CMS, except as provided for at § 488.1040(b)(2).

++ *Response to a written notice from CMS.* A statement acknowledging that, in response to a written notice from CMS to the home infusion therapy accrediting organization of a change in the applicable home infusion therapy accreditation requirements or survey process, the organization will provide CMS with proposed corresponding changes in the accrediting organization's home infusion therapy accreditation requirements for its CMS-approved home infusion therapy accreditation program to ensure that its accreditation standards continue to meet or exceed those of Medicare, or survey process remains comparable with that of Medicare. The home infusion therapy accrediting organization must comply with the following requirements:

—The proposed changes must be submitted within 30 calendar days of the date of the written CMS notice to the home infusion therapy accrediting organization or by a date specified in the notice, whichever is later. CMS gives due consideration to a home infusion therapy accrediting organization's request for an extension of the deadline as long as it is submitted prior to the due date.

—The proposed changes are not to be implemented without prior written notice of continued program approval from CMS, except as provided for at § 488.1040(b)(2)(ii).

• The organization's proposed fees for accreditation, including any plans for reducing the burden and cost of accreditation to small and rural suppliers (§ 488.1010(a)(2)).

• *Acknowledgement agreeing to release of accreditation surveys.* The home infusion accreditation organization must include a statement within its accreditation application and accreditation agreement with each home infusion therapy supplier, agreeing to release its most current accreditation survey and any information related to the survey that CMS may require, including the home infusion therapy supplier's corrective action plans (§ 488.1025).

• *Acknowledgement of Onsite Observation of Accrediting Organizations.* The home infusion accreditation organization must include a statement its accreditation application to permit CMS to conduct an onsite inspection of the home infusion therapy accreditation organizations operations and offices at any time to verify the organization's representation and to assess the organizations compliance with its own policies and procedures (§ 488.1040).

• *Acknowledgement of Reconsideration Process.* The home infusion therapy accreditation organization must include a statement acknowledging understanding of the reconsideration process. The home infusion therapy accreditation organization may request reconsideration of an unfavorable decision made by CMS, as stated at (§ 488.1050).

C. Requests for Additional Information by CMS (§ 488.1010(b))

If CMS determines that additional information is necessary to make a determination for approval or denial of the home infusion therapy accrediting organization's initial application (or reapplication) for CMS-approval of an accreditation program, CMS may require that the home infusion therapy accrediting organization submit any additional documentation and attestations necessary as a condition of approval of accreditation. If such additional information is required, CMS will notify the home infusion therapy accrediting organization and afford it an opportunity to provide the additional information.

D. Withdrawal of an Application (§ 488.1010(c))

A home infusion therapy accrediting organization may withdraw its initial application seeking CMS' approval of its home infusion therapy accreditation program at any time before CMS publishes the final notice as provided in § 488.1020(b).

E. Evaluation of Applications

An application review team will evaluate all applications submitted by accrediting organizations seeking designation as CMS-approved home infusion therapy accrediting organizations under section 1834(u)(5)(B) of the Act using the processes for consideration set forth in part 488, subpart L.

F. Notice of Approval or Disapproval of Application (§ 488.1010(d))

We are required to send a notice of its decision to approve or disapprove the home infusion therapy accrediting organization's application within 210 calendar days from the date CMS determines the home infusion therapy accrediting organization's application is complete. The final notice will specify the following:

• The basis for the decision.

• The effective date.

• The term of the approval (not exceed 6 years).

G. Public Notice and Comment (§ 488.1020)

We are required to publish a notice in the **Federal Register** when the following conditions are met:

• *Proposed notice.* CMS publishes a notice after the receipt of a completed application from a national home infusion therapy accrediting organization seeking CMS's approval of a home infusion therapy accreditation program. The notice identifies the home infusion therapy accrediting organization, the type of suppliers covered by the home infusion therapy accreditation program, and provides at least a 30-day public comment period (beginning on the date of publication) (§ 488.1020(a)).

• *Final notice.* The final notice announces CMS decision to approve or deny a national accrediting organization application. The notice specifies the basis for the CMS decision (§ 488.1020(b)).

++ *Approval or re-approval.* If CMS approves or re-approves the home infusion therapy accrediting organization's home infusion therapy accreditation program, the final notice at a minimum includes the following information:

++ A description of how the home infusion therapy accreditation program meets or exceeds Medicare home infusion therapy accreditation program requirements.

++ The effective date of approval (no later than the publication date of the notice).

++ The term of the approval (6 years or less).

• *Denial.* If CMS does not approve the home infusion therapy accrediting organization's accreditation program, the final notice describes the following:

++ How the home infusion therapy accrediting organization fails to meet Medicare home infusion therapy accreditation program requirements.

++ The effective date of the decision.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: *February 19, 2019.*

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–03621 Filed 2–27–19; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1705–N]

Medicare Program; Public Meetings in Calendar Year 2019 for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the dates, time, and location of the Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in calendar year 2019 to discuss our preliminary coding and payment determinations for all new public requests for revisions to the HCPCS. These meetings provide a forum for interested parties to make oral presentations or to submit written comments in response to preliminary coding and payment determinations. The discussion will be focused on responses to our specific preliminary recommendations and will include all items on the public meeting agenda.

DATES:

Meeting Dates: The following are the 2019 HCPCS public meeting dates:

1. Monday, May 13, 2019, 9 a.m. to 5 p.m., eastern daylight time (e.d.t), for Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents.
2. Tuesday, May 14, 2019, 9 a.m. to 5 p.m., e.d.t, for Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents.
3. Wednesday, May 15, 2019, 9 a.m. to 5 p.m., e.d.t., for Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents.
4. Tuesday, June 11, 2019, 9 a.m. to 5 p.m., e.d.t., for Durable Medical Equipment (DME) and Accessories, Orthotics and Prosthetics (O&P) Supplies, and Other for DME and Accessories, O&P Supplies, and Other.
5. Wednesday, June 12, 2019, 9 a.m. to 5 p.m., e.d.t., for DME and Accessories, O&P Supplies, and Other.

Deadlines for Primary Speaker Registration and Presentation Materials: The deadline for registering to be a primary speaker and submitting materials and writings that will be used in support of an oral presentation are as follows:

- Monday, April 29, 2019, for the May 13, 14 and 15, 2019 Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents public meetings.
- Tuesday, May 28, 2019, for the June 11 and 12, 2019 DME and Accessories, O&P Supplies, and Other public meetings.

Registration Deadline for Attendees that are Foreign Nationals: CMS' registration deadlines for attendees that are foreign nationals (including the deadlines for providing necessary information for security clearance) are as follows:

- Monday, April 22, 2019, for the May 13, 14 and 15, 2019 Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents public meetings.
- Tuesday, May 21, for the June 11 and 12, 2019 DME and Accessories, O&P Supplies, and Other public meetings.

Registration Deadlines for all Other Attendees: The registration deadlines are different for each meeting. Registration deadlines are as follows:

- Monday, April 29, 2019, for the May 13, 14 and 15, 2019 Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents public meetings.
- Tuesday, May 28, 2019, for the June 11 and 12, 2019 DME and Accessories, O&P Supplies, and Other public meetings.

Deadlines for Requesting Special Accommodations: Individuals who plan to attend the public meetings and require sign-language interpretation or other special assistance must request these services by the following deadlines:

- Monday, April 29, 2019, for the May 13, 14 and 15, 2019 Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents public meetings.
- Tuesday, May 28, 2019, for the June 11 and 12, 2019 DME and Accessories, O&P Supplies, and Other public meetings.

Deadline for Submission of Written Comments: Written comments and other documentation in response to a preliminary coding or payment determination that are received by no later than the date of the public meeting at which the code request is scheduled for discussion, will be considered in formulating a final coding decision.

ADDRESSES:

Meeting Location: The public meetings will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Submission of Written Comments: Written comments may either be emailed to *HCPCS@cms.hhs.gov* or sent via regular mail to Irina Akelaitis or Felicia Kyeremeh at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–09–14, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Individuals wishing to participate or who need special accommodations or both must register by completing the on-line registration located at *www.cms.hhs.gov/medhcpcsgeninfo* or by contacting the staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FOR FURTHER INFORMATION CONTACT: Irina Akelaitis, (410) 786–4602, or *Irina.Akelaitis@cms.hhs.gov;* or Felicia Kyeremeh, (410) 786–1898 or *Felicia.Kyeremeh@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME) under Medicare Part B of title XVIII of the Social Security Act (the Act). In the November 23, 2001 **Federal Register** (66 FR 58743), we published a notice providing information regarding the establishment of the public meeting process for DME. The procedures and public meetings announced in that notice for new DME were in response to the mandate of section 531(b) of BIPA. As part of HCPCS reform, we expanded the public meeting forum to include all public requests as of the 2005–2006 coding cycle.

It is our intent to distribute any submitted materials to CMS' Healthcare Common Procedure Coding System (HCPCS) workgroup members for their consideration. CMS HCPCS workgroup members require sufficient preparation time to review all relevant materials. Therefore, we are implementing a 10-page submission limit and firm deadlines for receipt of any presentation

materials a meeting speaker wishes us to consider. For this reason, CMS will only accept and review presentation materials received by the deadline for each public meeting, as specified in the **DATES** section of this notice.

The public meeting process provides an opportunity for the public to become aware of and provide input regarding coding changes under consideration, as well as an opportunity for us to gather public input.

II. Meeting Registration

A. Required Information for Registration

The following information must be provided when registering on-line to attend:

- Name.
- Company name and address.
- Direct-dial telephone and fax numbers.
- Email address.
- Special needs information.

A CMS staff member will confirm your registration by email.

B. Registration Process

1. Primary Speakers

Individuals must also indicate whether they are the ''primary speaker'' for an agenda item. Primary speakers must be designated by the entity that submitted the HCPCS coding request. When registering, primary speakers must provide a brief written statement regarding the nature of the information they intend to provide and advise CMS' HCPCS staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, regarding needs for audio/visual support. To avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accept tapes and disk files that are received by the deadline for submissions for each public meeting as specified in the **DATES** section of this notice. Late submissions and updates of electronic materials after our deadline cannot be accommodated.

Please note our page limit for primary speaker presentation materials. The sum of all presentation materials and additional supporting documentation may not exceed 10 pages (each side of a page counts as 1 page). An exception will be made to the 10-page limit only for relevant studies newly published between the application deadline and the public meeting date, in which case, we would like a copy of the complete publication as soon as possible. This exception applies only to the page limit and not the submission deadline.

The materials may be emailed or delivered by regular mail to CMS officials as specified in the **ADDRESSES** section of this notice. The materials must be emailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to provide 25 copies if materials are delivered by mail.

2. ''5-Minute Speakers''

To afford the same opportunity to all attendees, 5-minute speakers are not required to register as primary speakers. However, 5-minute speakers must still register as attendees by the deadline set forth under ''Registration Deadlines for all Other Attendees'' in the **DATES** section of this notice. Attendees can sign up only on the day of the meeting to do a 5-minute presentation. Individuals must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that they will address.

C. Additional Meeting/Registration Information

The product category reported in the HCPCS code application by the applicant may not be the same as that assigned by us. Prior to registering to attend a public meeting, all participants are advised to review the public meeting agendas at *www.cms.hhs.gov/medhcpcsgeninfo* which identify our category determinations, and the dates each item will be discussed. Draft agendas, including a summary of each request and our preliminary decision will be posted on our HCPCS website at *www.cms.hhs.gov/medhcpcsgeninfo* at least 4 weeks before each meeting.

Additional details regarding the public meeting process for all new public requests for revisions to the HCPCS, along with information on how to register and guidelines for an effective presentation, will be posted at least 4 weeks before the first meeting date on the official HCPCS website at *www.cms.hhs.gov/medhcpcsgeninfo.* The document titled ''Guidelines for Participation in Public Meetings for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS)'' will be made available on the HCPCS website at least 4 weeks before the first public meeting in 2019 for all new public requests for revisions to the HCPCS. Individuals who intend to provide a presentation at a public meeting need to familiarize themselves with the HCPCS website and the valuable information it provides to prospective registrants. The HCPCS website also contains a document titled ''Healthcare Common Procedure Coding System (HCPCS) Level II Coding Procedures,'' which is a description of the HCPCS coding process, including a detailed explanation of the procedures used to make coding determinations for all the products, supplies, and services that are coded in the HCPCS.

The HCPCS website also contains a document titled ''HCPCS Decision Tree & Definitions,'' which illustrates, in flow diagram format, HCPCS coding standards as described in our Coding Procedures document.

III. Presentations and Comment Format

We can only estimate the amount of meeting time that will be needed since it is difficult to anticipate the total number of speakers that will register for each meeting. Meeting participants must arrive early to allow time to clear security and sign-in. Each meeting is expected to begin promptly as scheduled. Meetings may end earlier than the stated ending time.

A. Oral Presentation Procedures

All primary speakers must register as provided under the section titled ''Meeting Registration.'' All materials that will be used in support of an oral presentation must be submitted to the CMS staff specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

The materials may be emailed or delivered by regular mail to the CMS staff as specified in the **ADDRESSES** section of this notice. The materials must be emailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to include 25 copies if materials are delivered by mail.

B. Primary Speaker Presentations

The individual or entity requesting revisions to the HCPCS coding system for a particular agenda item may designate one ''primary speaker'' to make a presentation for a maximum of 15 minutes. Fifteen minutes is the total time interval for the presentation, and the presentation must incorporate any demonstration, set-up, and distribution of material. In establishing the public meeting agenda, we may group multiple, related requests under the same agenda item. In that case, we will decide whether additional time will be allotted, and may opt to increase the amount of time allotted to the speaker by increments of less than 15 minutes.

Individuals designated to be *the primary speaker must register to attend* by the date specified in the **DATES** section of this notice using the meeting registration procedures described in the section II. of this notice, ''Meeting

Registration''. *Primary speakers must also separately register as primary speakers* as specified in the **DATES** section of this notice.

C. ''5-Minute'' Speaker Presentations

Meeting attendees can sign up at the meeting, on a first-come, first-served basis, to make presentations for up to 5 minutes on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator regarding how many ''5-minute speakers'' can be accommodated and whether the 5-minute time allocation would be reduced, to accommodate the number of speakers.

D. Speaker Declaration

On the day of the meeting, before the end of the meeting, all primary speakers and 5-minute speakers must provide a brief written summary of their comments and conclusions to CMS' HCPCS staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Every primary speaker and 5-minute speaker must declare at the beginning of their presentation at the meeting, as well as in their written summary, whether they have any financial involvement with the manufacturers or competitors of any items being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

E. Written Comments From Meeting Attendees

Written comments will be accepted from the general public and meeting registrants anytime up to the date of the public meeting at which a request is discussed. Comments must be sent to the address listed in the **ADDRESSES** section of this notice.

Meeting attendees may also submit their written comments at the meeting. Due to the close timing of the public meetings, subsequent workgroup reconsiderations, and final decisions, we are able to consider only those comments received in writing by the close of business on the date of the public meeting at which the request is discussed.

F. Remote Attendance and Participation

CMS' HCPCS Public Meetings are, and have been live-streamed on U-Tube for viewing and listening only. CMS is considering steps for future coding cycles that would make our HCPCS coding program even more transparent, and provide additional opportunities for public input, by expanding participation in HCPCS Public Meetings, and making participation easier. Specifically, we are examining the logistics and feasibility of arranging for oral presentations to be made from remote locations, as opposed to in-person at CMS only.

IV. Security, Building, and Parking Guidelines

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register no later than the date specified in the **DATES** section of this notice.

Attendees that are foreign nationals are required to identify themselves as such, and provide the necessary information for security clearance in advance of the date of the public meeting the individual plans to attend to CMS' HCPCS staff listed in the **ADDRESSES** section of this notice.

All individuals who are not foreign nationals who plan to enter the building to attend the public meeting must register for each date that they plan on attending.

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Dated: February 19, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–03620 Filed 2–27–19; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10415]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 30, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or

Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10415 Generic Clearance for the Collection Customer Satisfaction Surveys

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Generic Clearance for the Collection Customer Satisfaction Surveys; *Use:* This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Collecting voluntary customer feedback is the least burdensome, most effective way for the Agency to determine whether or not its public websites are useful to and used by its customers. Generic clearance is needed to ensure that the Agency can continuously improve its websites though regular surveys developed from these pre-defined questions. Surveying the Agency websites on a regular, ongoing basis will help ensure that users have an effective, efficient, and satisfying experience on any of the websites, maximizing the impact of the information and resulting in optimum benefit for the public. The surveys will ensure that this communication channel meets customer and partner priorities, builds the Agency's brands, and contributes to the Agency's health and human services impact goals. *Form Number:* CMS–10415 (OMB control number: 0938–1185); *Frequency:* Occasionally; *Affected Public:* Individuals and Households, Business or other for-profits and Not-for-profit institutions, State, Local or Tribal Governments; *Number of Respondents:* 1,000,000; *Total Annual Responses:* 1,000,000; *Total Annual Hours:* 50,000. (For policy questions regarding this collection contact John Booth at 410–786–6577.)

Dated: February 25, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–03638 Filed 2–28–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0767]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization; Scheduling Recommendations; Dronabinol (*delta*-9-tetrahydrocannabinol) and its Stereoisomers; Cannabis, Cannabis Resin, Extracts and Tinctures; Cannabidiol Preparations; and Pharmaceutical Preparations of Cannabis; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is providing interested persons with the opportunity to submit comments about the World Health Organization (WHO) recommendations to impose international manufacturing and distributing restrictions, under international treaties, on certain drug substances. The comments received in response to this notice will be considered in preparing the United States' position on these proposals for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, March 18–22, 2019. This notice is issued under the Controlled Substances Act (CSA).

DATES: Submit either electronic or written comments on the notice by March 14, 2019. The short time period for the submission of comments is needed to ensure that the U.S. Department of Health and Human Services (HHS) may, in a timely fashion, carry out the required action and be responsive to the United Nations.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 14, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 14, 2019. Comments received by mail/hand delivery/courier

(for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–0767 for ''International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization; Scheduling Recommendations; Cannabis and Cannabis Resin; Dronabinol (*delta*-9-tetrahydrocannabinol); Tetrahydrocannabinol (Isomers of *delta*-9-tetrahydrocannabinol); Extracts and Tinctures of Cannabis; Cannabidiol Preparations; Preparations Produced Either by Chemical Synthesis or as Preparation of Cannabis; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 5150, Silver Spring, MD 20993–0002, 301–796–3156, *james.hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (1971 Psychotropic Convention). Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the 1971 Psychotropic Convention that the CND proposes to decide whether to add a drug or other substance to one of the schedules of the 1971 Psychotropic Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit notice of such information to the Secretary of Health and Human Services (Secretary of HHS). The Secretary of HHS must then publish a summary of such information in the **Federal Register** and provide opportunity for interested persons to submit comments. The Secretary of HHS must then evaluate the proposal and furnish a recommendation to the Secretary of State that shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

As detailed in the following paragraphs, the Secretary of State has received notification from the Secretary-General of the United Nations (the Secretary-General) regarding two substances to be considered for deleting from the 1971 Psychotropic Convention. This notification reflects the recommendation from the 41st WHO Expert Committee for Drug Dependence (ECDD), which met in November 2018. In the **Federal Register** of October 10, 2018 (83 FR 50938), FDA announced the WHO ECDD review and invited interested persons to submit information for WHO's consideration.

The full text of the notification from the Secretary-General is provided in section II of this document. Section 201(d)(2)(B) of the CSA requires the Secretary of HHS, after receiving a notification proposing scheduling, to publish a notice in the **Federal Register** to provide the opportunity for interested persons to submit information and comments on the proposed scheduling action.

The United States is also a party to the 1961 Single Convention on Narcotic Drugs (1961 Single Convention). The Secretary of State has received a notification from the Secretary-General regarding several substances to be considered for changes in control under this convention. The CSA does not require HHS to publish a summary of such information in the **Federal Register**. Nevertheless, to provide interested and affected persons an

opportunity to submit comments regarding the WHO recommendations for narcotic drugs, the notification regarding these substances is also included in this **Federal Register** notice. The comments will be shared with other relevant Agencies to assist the Secretary of State in formulating the position of the United States on the control of these substances. The HHS recommendations are not binding on the representative of the United States in discussions and negotiations relating to the proposal regarding control of substances under the 1961 Single Convention.

II. United Nations Notification

The formal notification from the United Nations that identifies the drug substances and explains the basis for the recommendations is reproduced as follows (non-relevant text removed):

Reference: NAR/CL.3/2019 WHO/ECDD41; 1961C-Art.3, 1971C-Art.2 CU 2019/36/DTA/SGB (A)

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that on 28 January 2019, he received a notification from the Director-General of the World Health Organization (WHO), pursuant to article 3, paragraphs 1, 3, 5, and 6 of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol (1961 Convention), and article 2, paragraphs 1, 4, and 6 of the Convention on Psychotropic Substances of 1971 (1971 Convention), with the following recommendations regarding the review of cannabis and cannabis-related substances as follows:

—Cannabis and cannabis resin

To be deleted from Schedule IV of the 1961 Convention.

—Dronabinol (*delta*-9-tetrahydrocannabinol)

To be added to Schedule I of the 1961 Convention.

To be deleted from Schedule II of the 1971 Convention, subject to the CND's adoption of the recommendation to add dronabinol and its stereoisomers (*delta*-9-tetrahydrocannabinol) to Schedule I of the 1961 Convention.

—Tetrahydrocannabinol (Isomers of *delta*-9-tetrahydrocannabinol)

To be added to Schedule I of the 1961 Convention subject to the CND's adoption of the recommendation to add dronabinol and its stereoisomers (*delta*-9-tetrahydrocannabinol) to Schedule I of the 1961 Convention.

To be deleted from Schedule I of the 1971 Convention, subject to the CND's adoption of the recommendation to add tetrahydrocannabinol to Schedule I of the 1961 Convention on Narcotic Drugs.

—Extracts and tinctures

To be deleted from Schedule I of the 1961 Convention.

—Cannabidiol preparations

To give effect to the recommendation of the fortieth meeting of the ECDD that preparations considered to be pure cannabidiol (CBD) should not be scheduled within the International Drug Control Conventions by adding a footnote to the entry for cannabis and cannabis resin in Schedule I of the 1961 Convention to read, ''*Preparations containing predominantly cannabidiol and not more than 0.2 percent of delta-9-tetrahydrocannabinol are not under international control.*''

Preparations produced either by chemical synthesis or as preparation of cannabis, that are compounded as pharmaceutical preparations with one or more other ingredients and in such a way that *delta*-9-tetrahydrocannabinol (dronabinol) cannot be recovered by readily available means or in a yield which would constitute a risk to public health.

To be added to Schedule III of the 1961 Convention.

In accordance with the provisions of article 3, paragraph 2 of the 1961 Convention, and article 2, paragraph 2 of the 1971 Convention, the Secretary-General hereby transmits the notification as annex I to the present note. The relevant extract from the report of the 41st meeting of the WHO Expert Committee on Drug Dependence is hereby transmitted as annex II. For time reasons, this notification and its annexes I and II are transmitted in English only. The notification will be transmitted in French and Spanish as soon as it becomes available.

Also in accordance with the same provisions, the notification from WHO will be brought to the attention of the 62nd session of the Commission on Narcotic Drugs (from 14 to 22 March 2019) in document E/CN.7/2019/12, which will be made available on the website of the 62nd session of the CND: *http://www.unodc.org/unodc/en/commissions/CND/session/62_Session_2019/session-62-of-the-commission-on-narcotic-drugs.html.*

To assist the Commission in reaching a decision, it would be appreciated if the Government could communicate any comments it considers relevant to the recommendations made by WHO regarding changes in the scope of control of cannabis and cannabis-related substances under the 1961 Convention, namely:

—Cannabis and cannabis resin

—Dronabinol (*delta*-9-tetrahydrocannabinol)

—Tetrahydrocannabinol (Isomers of *delta*-9-tetrahydrocannabinol)

—Extracts and tinctures

—Cannabidiol preparations;

—Preparations produced either by chemical synthesis or as preparation of cannabis, that are compounded as pharmaceutical preparations with one or more other ingredients and in such a way that *delta*-9-tetrahydrocannabinol (dronabinol) cannot be recovered by readily available means or in a yield which would constitute a risk to public health; as well any economic, social, legal, administrative or other factors that it considers relevant to the recommendations made by WHO regarding changes in the scope of control of cannabis and cannabis-related substances under the 1971 Convention, namely:

—Dronabinol (*delta*-9-tetrahydrocannabinol)

—Tetrahydrocannabinol (Isomers of *delta*-9-tetrahydrocannabinol)

1 February 2019

Annex I

Letter Addressed to the Secretary-General of the United Nations From the Director-General of the World Health Organization, 24 January 2019

''The forty-first meeting of the WHO Expert Committee on Drug Dependence (ECDD) convened from 12 to 16 November 2018 at WHO headquarters in Geneva. Following recommendations made by the fortieth ECDD in June 2018 regarding the pre-review of cannabis and cannabis-related substances, the forty-first ECDD carried out critical reviews of these substances to determine the most relevant level of international control for cannabis and cannabis-related substances and whether the World Health Organization (WHO) should recommend changes in their level of control.

In addition, the forty-first WHO ECDD reviewed ten New Psychoactive Substances (NPS), five of which are synthetic opioids; and two pain-relieving medicines, pregabalin and tramadol. The recommendations regarding these substances are communicated to you through a separate letter under the same date as this letter.

The review of cannabis and cannabis-related substances was carried out in relation to Resolution 52/5 of the Commission on Narcotic Drugs, in which the Commission stated that it looked forward to an updated report on cannabis by the Expert Committee.

With reference to Article 3, paragraphs 1, 3, 5, and 6 of the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol, and Article 2, paragraphs 1, 4, *and* 6 of the Convention on Psychotropic Substances (1971), I am pleased to submit recommendations of the forty-first meeting of the ECDD regarding the review of cannabis and cannabis-related substances as follows:

Cannabis and cannabis-related substances

—Cannabis and cannabis resin

To be deleted from Schedule IV of the Single Convention on Narcotic Drugs (1961).

—Dronabinol (*delta*-9-tetrahydrocannabinol)

To be added to Schedule I of the Single Convention on Narcotic Drugs (1961).

To be deleted from Schedule II of the Convention on Psychotropic Substances (1971), subject to the CND's adoption of the recommendation to add dronabinol and its stereoisomers (*delta*-9-tetrahydrocannabinol) to Schedule I of the Single Convention on Narcotic Drugs (1961).

—Tetrahydrocannabinol (Isomers of delta-9-tetrahydrocannabinol)

To be added to Schedule I of the Single Convention on Narcotic Drugs (1961), subject to the CND's adoption of the recommendation to add dronabinol and its stereoisomers (*delta*-9-tetrahydrocannabinol) to Schedule I of the Single Convention on Narcotic Drugs (1961).

To be deleted from Schedule I of the Convention on Psychotropic Substances (1971), subject to the CND's adoption of the recommendation to add tetrahydrocannabinol to Schedule I of the Single Convention on Narcotic Drugs (1961).

—Extracts and tinctures

To be deleted from Schedule I of the Single Convention on Narcotic Drugs (1961).

—Cannabidiol preparations

To give effect to the recommendation of the fortieth meeting of the ECDD that preparations considered to be pure CBD should not be scheduled within the International Drug Control Conventions by adding a footnote to the entry for cannabis and cannabis resin in Schedule I of the Single Convention on Narcotic Drugs (1961) to read ''Preparations containing predominantly cannabidiol and not more than 0.2 percent of *delta*-9-tetrahydrocannabinol are not under international control.''

—Preparations produced either by chemical synthesis or as preparation of cannabis, that are compounded as pharmaceutical preparations with one or more other ingredients and in such a way that *delta*-9-tetrahydrocannabinol (dronabinol) cannot be recovered by readily available means or in a yield which would constitute a risk to public health

To be added to Schedule III of the Single Convention on Narcotic Drugs (1961).

The assessments and findings on which they are based are set out in detail in the forty-first report of the WHO Expert Committee on Drug Dependence. An extract of the report is attached in Annex 1 of this letter.

I am very pleased with the ongoing collaboration between WHO, the United Nations Office on Drugs and Crime (UNODC), and the International Narcotics Control Board (INCB), and in particular, how this collaboration has benefited the work of the WHO Expert Committee on Drug Dependence (including through the participation of UNODC and INCB in the forty-first meeting of the ECDD), and more generally, the implementation of the operational recommendations of the United Nations General Assembly Special Session (UNGASS) 2016.''

Annex II

Extract From the Report of the 41st Expert Committee on Drug Dependence

5. Cannabis and Cannabis-Related Substances

5.1 Cannabis and Cannabis Resin

In the 1961 Single Convention on Narcotic Drugs, cannabis and cannabis resin are described, respectively, as the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted and as the separated resin, whether crude or purified, obtained from the cannabis plant. Reference to cannabis below will be taken to also include cannabis resin. Of the many compounds in cannabis, *delta*-9-tetrahydrocannabinol (Δ9-THC) is the principal psychoactive constituent of cannabis, while CBD is also present but is not psychoactive.

Following consumption of cannabis, the adverse effects experienced include dizziness and impairment of motor control and cognitive function. As a result of the effects on movement and cognition, cannabis use can impair driving. There are particular risks of cannabis use reported for children, such as respiratory depression, tachycardia and coma. The adverse effects of cannabis consumption are similar to those produced by Δ9-THC alone.

There are also a number of adverse effects associated with long-term cannabis use, particularly increased risk of mental health disorders such as anxiety, depression, and psychotic illness. Chronic regular cannabis use is particularly problematic for young people because of its effects on the developing brain.

Cannabis can cause physical dependence in people who use the drug daily or near daily. This is evidenced by the onset of cannabis withdrawal symptoms that occur upon abstinence; these symptoms include gastrointestinal disturbance, appetite changes, irritability, restlessness and sleep impairment. Clinical diagnostic guidelines such as DSM–5 and ICD–10 recognize cannabis dependence and other disorders related to cannabis use.

The Committee considered information regarding the therapeutic indications of cannabis and ongoing research into its possible medical applications. A number of countries permit the use of cannabis for the treatment of medical conditions such as chemotherapy-induced nausea and vomiting, pain, sleep disorders, and spasticity associated with multiple sclerosis. The Committee recognized the limited robust scientific evidence on the therapeutic use of cannabis. However, some oral pharmaceutical preparations of cannabis have therapeutic advantages for treatment of conditions such as certain forms of pain and epilepsy. Preparations of cannabis are defined as a mixture, solid, or liquid containing cannabis and are generally subject to the same measures of control as cannabis and cannabis resin as per Article 2.3 of the 1961 Single Convention on Narcotic Drugs.

Cannabis and cannabis resin are included in Schedule I and Schedule IV of the 1961 Single Convention on Narcotic Drugs. Substances that are included in both these Schedules are particularly liable to abuse and to produce ill-effects and have little or no therapeutic use. Other substances that are included in both Schedules I and IV are fentanyl analogues, heroin, and other opioids that are considered especially dangerous. Use of all these substances is associated with a significant risk of death, whereas cannabis use is not associated with such risk.

The evidence presented to the Committee did not indicate that cannabis plant and cannabis resin were particularly liable to produce ill-effects similar to the effects of the other substances in Schedule IV of the 1961

Single Convention on Narcotic Drugs. In addition, preparations of cannabis have shown therapeutic potential for treatment of pain and other medical conditions such as epilepsy and spasticity associated with multiple sclerosis. In line with the above, cannabis and cannabis resin should be scheduled at a level of control that will prevent harm caused by cannabis use and, at the same time, will not act as a barrier to access and to research and development of cannabis-related preparation for medical use.

The Committee concluded that the inclusion of cannabis and cannabis resin in Schedule IV is not consistent with the criteria for a drug to be placed in Schedule IV.

The Committee then considered whether cannabis and cannabis resin were better placed in Schedule I or Schedule II of the 1961 Single Convention on Narcotic Drugs. While the Committee did not consider that cannabis is associated with the same level of risk to health as most of the other drugs that have been placed in Schedule I, it noted the high rates of public health problems arising from cannabis use and the global extent of such problems and, for these reasons, recommended that cannabis and cannabis resin continue to be included in Schedule I of the 1961 Single Convention on Narcotic Drugs.

• *Recommendation 5.1:* The Committee recommended that Cannabis and Cannabis Resin be deleted from Schedule IV of the 1961 Single Convention on Narcotic Drugs.

5.2 Dronabinol (*delta*-9-tetrahydrocannabinol; Δ9-THC)

The main psychoactive substance in the cannabis plant is one of the four stereoisomers of *delta*-9-tetrahydrocannabinol (Δ9-THC). This substance has therapeutic uses and is sometimes known by its international non-proprietary name dronabinol. It is currently placed in Schedule II of the 1971 Convention on Psychotropic Substances.

At the time of the adoption of the 1961 Single Convention on Narcotic Drugs, scientific research had not identified Δ9-THC as the main psychoactive compound in cannabis. Subsequently, Δ9-THC was included in the 1971 Convention on Psychotropic Substances at its inception. In previous ECDD reviews, the active and naturally occurring stereoisomer of Δ9-THC known as dronabinol had been considered in a synthetic form as a pharmaceutical preparation. Following a recommendation from the 27th ECDD, dronabinol was placed in Schedule II of the 1971 Convention on Psychotropic Substances. The Commission on Narcotic Drugs, however, did not adopt a subsequent recommendation to place dronabinol in Schedule III of the 1971 Convention on Psychotropic Substances.

The Committee noted that whereas in these previous ECDD reviews Δ9-THC, and especially its active stereoisomer dronabinol, had been considered in a synthetic form as a pharmaceutical preparation, Δ9-THC today also refers to the main psychoactive component of cannabis and the principal compound in illicit cannabis-derived psychoactive products. Some of these products contain Δ9-THC at concentrations as high as 90 percent. Butane hash oil is an example of a high purity Δ9-THC illicit cannabis-derived product that has recently emerged and is being used by heating and inhalation of the vapor. In such high purity illicitly derived forms, Δ9-THC produces ill-effects, dependence, and abuse potential that is at least as great as for cannabis, which is placed in Schedule I of the 1961 Single Convention on Narcotic Drugs.

A substance liable to similar abuse and productive of similar ill-effects as that of a substance already scheduled within the 1961 Single Convention on Narcotic Drugs would normally be scheduled in the same way as that substance. As Δ9-THC is liable to similar abuse as cannabis and has similar ill-effects, it meets the criteria for inclusion in Schedule I of the 1961 Single Convention on Narcotic Drugs. It was further recognized that cocaine, the principal active compound in coca, is placed along with coca leaf in Schedule I of the 1961 Single Convention on Narcotic Drugs and morphine; the principal active compound in opium is placed with opium in the same schedule. Placing Δ9-THC, the principal active compound in cannabis, in the same schedule as cannabis would be consistent with this approach.

Based on requests received from Member States and information received from other United Nations agencies, the Committee understood that placing Δ9-THC under the same Convention and in the same schedule as cannabis, Schedule I of the 1961 Single Convention on Narcotic Drugs, would greatly facilitate the implementation of the control measures of the Conventions in Member States. Accordingly:

• *Recommendation 5.2.1:* The Committee recommended that dronabinol and its stereoisomers (*delta*-9-tetrahydrocannabinol) be added to Schedule I of the 1961 Single Convention on Narcotic Drugs.

As indicated in the ''Guidance on the WHO review of psychoactive substances for international control,'' to facilitate efficient administration of the international control system, it is not advisable to place a substance under more than one Convention. Accordingly:

• *Recommendation 5.2.2:* The Committee recommended the deletion of dronabinol and its stereoisomers (*delta*-9-tetrahydrocannabinol) from the 1971 Convention on Psychotropic Substances, Schedule II, subject to the Commission's adoption of the recommendation to add dronabinol and its stereoisomers (*delta*-9-tetrahydrocannabinol) to Schedule I of the 1961 Single Convention on Narcotic Drugs.

5.3 Tetrahydrocannabinol (Isomers of *delta*-9-tetrahydrocannabinol)

There are currently six isomers of tetrahydrocannabinol (THC) listed in Schedule I of the 1971 Convention on Psychotropic Substances. These six isomers are chemically similar to *delta*-9-tetrahydrocannabinol (Δ9-THC), which is currently listed in Schedule II of the 1971 Convention on Psychotropic Substances, but which the Committee has recommended deleting from this Schedule and including in Schedule I of the 1961 Single Convention on Narcotic Drugs.

While these six isomers are chemically similar to Δ9-THC, there is very limited to no evidence concerning the abuse potential and acute intoxicating effects of these isomers. There are no reports that the THC isomers listed in Schedule I of the 1971 Convention induce physical dependence or that they are being abused or are likely to be abused so as to constitute a public health or social problem. There are no reported medical or veterinary uses of these isomers.

While the Committee recognized that available evidence has not demonstrated abuse and ill-effects of these isomers similar to those associated with Δ9-THC, it noted that, due to the chemical similarity of each of the six isomers to Δ9-THC, it is very difficult to differentiate any of these six isomers from Δ9-THC using standard methods of chemical analysis. The Committee understood that placing these six isomers under the same Convention and in the same Schedule as Δ9-THC would facilitate the implementation of international control of Δ9-THC, as well as assist Member States in the implementation of control measures at country level. Accordingly:

• *Recommendation 5.3.1:* The Committee recommended that

tetrahydrocannabinol (understood to refer to the six isomers currently listed in Schedule I of the 1971 Convention on Psychotropic Substances) be added to Schedule I of the 1961 Single Convention on Narcotic Drugs, subject to the Commission's adoption of the recommendation to add dronabinol (*delta*-9-tetrahydrocannabinol) to the 1961 Single Convention on Narcotic Drugs in Schedule I.

As indicated in the ''Guidance on the WHO review of psychoactive substances for international control,'' to facilitate efficient administration of the international control system, it is not advisable to place a substance under more than one Convention. Accordingly:

• *Recommendation 5.3.2:* The Committee recommended that tetrahydrocannabinol (understood to refer to the six isomers currently listed in Schedule I of the 1971 Convention on Psychotropic Substances) be deleted from the 1971 Convention on Psychotropic Substances, subject to the Commission's adoption of the recommendation to add tetrahydrocannabinol to Schedule I of the 1961 Single Convention on Narcotic Drugs.

5.4 Extracts and Tinctures of Cannabis

Extracts and tinctures of cannabis are preparations that are produced by application of solvents to cannabis and that are currently placed in Schedule I of the 1961 Single Convention on Narcotic Drugs. These include both medical preparations such as that containing an approximately equal mixture of *delta*-9-tetrahydrocannabinol (dronabinol; Δ9-THC) and cannabidiol and non-medical preparations with high concentrations of Δ9-THC such as butane hash oil. While the medical extracts and tinctures are administered orally, those produced and used illicitly are normally inhaled following heating and vaporization.

The Committee recognized that the term *Extracts and Tinctures of Cannabis* as cited in the 1961 Single Convention on Narcotic Drugs encompasses these diverse preparations that have psychoactive properties as well as those that do not. The Committee also recognized that the variability in psychoactive properties of these preparations is due principally to varying concentrations of Δ9-THC, which is currently scheduled in the 1971 Convention on Psychotropic Substances, and that some extracts and tinctures of cannabis without psychoactive properties and including predominantly cannabidiol have promising therapeutic applications. The fact that diverse preparations with a variable concentration of *delta*-9-THC are controlled within the same entry ''Extract and Tinctures'' and the same schedule, is a challenge for responsible authorities that implement control measures in countries.

As per the 1961 Single Convention on Narcotic Drugs, preparations are defined as mixtures, solid, or liquid containing a substance in Schedule I or II and are generally subject to the same measures of control as that substance. The Committee noted that, by this definition, the 1961 Single Convention on Narcotic Drugs may cover all products that are ''extracts and tinctures'' of cannabis as ''preparations'' of cannabis and also, if the Committee's recommendation to move dronabinol to Schedule I of the 1961 Single Convention on Narcotic Drugs was followed, as ''preparations'' of dronabinol and its stereoisomers. Accordingly:

• *Recommendation 5.4:* The Committee recommended deleting Extracts and Tinctures of Cannabis from Schedule I of the 1961 Single Convention on Narcotic Drugs.

5.5 Cannabidiol Preparations

At its 40th Meeting, the ECDD considered a critical review of cannabidiol and recommended that preparations considered to be pure cannabidiol should not be scheduled within the International Drug Control Conventions. Cannabidiol is found in cannabis and cannabis resin but does not have psychoactive properties and has no potential for abuse and no potential to produce dependence. It does not have significant ill-effects. Cannabidiol has been shown to be effective in the management of certain treatment-resistant, childhood-onset epilepsy disorders. It was approved for this use in the United States in 2018 and is currently under consideration for approval by the European Union.

Cannabidiol can be chemically synthesized or it can be prepared from the cannabis plant. The approved medication (Epidiolex) is a preparation of the cannabis plant. The Committee noted that medicines without psychoactive effects that are produced as preparations of the cannabis plant will contain trace amounts of *delta*-9-tetrahydrocannabinol (Δ9-THC; dronabinol). The cannabidiol preparation approved for the treatment of childhood-onset epilepsy, Epidiolex, contains not more than 0.15 percent Δ9-THC by weight and has no effects indicative of potential for abuse or dependence. In keeping with the recommendation that preparations considered pure cannabidiol not be controlled and recognizing that trace levels of Δ9-THC may be found in such preparations, such as the concentration of 0.15 percent in Epidiolex, while acknowledging that chemical analysis of Δ9-THC to an accuracy of 0.15 percent may be difficult for some Member States:

• *Recommendation 5.5:* The Committee recommended that a footnote be added to Schedule I of the 1961 Single Convention on Narcotic Drugs to read: ''Preparations containing predominantly cannabidiol and not more than 0.2 percent of *delta*-9-tetrahydrocannabinol are not under international control.''

5.6 Pharmaceutical Preparations of Cannabis and Dronabinol (*delta*-9-tetrahydrocannabinol)

There are currently two main types of registered medicines that contain *delta*-9-tetrahydrocannabinol (Δ9-THC; dronabinol).

One type is a preparation of cannabis that contains both the psychoactive Δ9-THC and the non-psychoactive cannabidiol in approximately equal concentrations, *e.g.,* Sativex. This is used for the treatment of spasticity due to multiple sclerosis.

A second type contains only Δ9-THC as the active compound and is used for the treatment of anorexia associated with weight loss in patients with Acquired Immune Deficiency Syndrome (AIDS) and for nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional antiemetic treatments.

Currently, approved medicines with Δ9-THC as the only active compound use synthetically produced Δ9-THC, *e.g.,* Marinol, Syndros, although it is possible in the future that medicines with equivalent amounts of Δ9-THC could be prepared from cannabis. There is no difference in the therapeutic effects or adverse effects of synthetic Δ9-THC compared to Δ9-THC from the cannabis plant.

These medicines are all taken orally and are approved for use in a number of countries.

The evidence concerning the use of these Δ9-THC containing medicines is that they are not associated with problems of abuse and dependence and they are not diverted for the purpose of non-medical use.

The Committee recognized that such preparations are formulated in a way that they are not likely to be abused, and there is no evidence of actual abuse or ill-effects to an extent that would justify

the current level of control associated with Schedule I of the 1961 Single Convention on Narcotic Drugs for cannabis-based preparations such as Sativex and the level of control associated with Schedule II of the 1971 Convention on Psychotropic Substances, for preparations using synthetic *delta*-9 THC, *e.g.,* Marinol and Syndros.

To impede access to these medicines and in reference to Article 3.4 of the 1961 Single Convention on Narcotic Drugs:

• *Recommendation 5.6:* The Committee recommended that preparations containing *delta*-9-tetrahydrocannabinol (dronabinol), produced either by chemical synthesis or as a preparation of cannabis, that are compounded as pharmaceutical preparations with one or more other ingredients and in such a way that *delta*-9-tetrahydrocannabinol (dronabinol) cannot be recovered by readily available means or in a yield which would constitute a risk to public health, be added to Schedule III of the 1961 Convention on Narcotic Drugs.

III. Discussion

At this time, it is uncertain whether the above notification from WHO of recommendations for proposed scheduling action on cannabis and cannabis related substances will be acted upon by 62nd session of the Commission on Narcotic Drugs (from 14 to 22 March 2019). The Bureau of the 62nd Commission is currently considering whether to postpone voting on the cannabis-related recommendations until the reconvened meeting in December, or the 63rd session of the Commission on Narcotic Drugs, March 2020. If voting is deferred to a later date the comment period will be reopened.

Although WHO has made specific scheduling recommendations for each of the drug substances, the CND is not obliged to follow the WHO recommendations. Options available to the CND for substances considered for control under the 1971 Psychotropic Convention include the following: (1) Accept the WHO recommendations; (2) accept the recommendations to control but control the drug substance in a schedule other than that recommended; or (3) reject the recommendations entirely.

Cannabis, also known as marijuana, is a plant known by biological names *Cannabis sativa* or *Cannabis indica.* It is a complex plant containing multiple cannabinoids and other compounds, including the psychoactive substance THC and other structurally similar compounds. Cannabinoids are defined as having activity at cannabinoid 1 and 2 (CB1 and CB2, respectively) receptors. Agonists of CB1 receptors are widely abused and are known to modulate motor coordination, memory processing, pain, and inflammation, and have anxiolytic effects. Marijuana is the most commonly used illicit drug in the United States.

The principal cannabinoids in the cannabis plant include THC, CBD, and cannabinol. These substances are controlled in Schedule I under the CSA. The synthetically derived single pure stereoisomer, *delta*-9-tetrahydrocannabinol (also known as dronabinol) is the active ingredient in two approved drug products in the United States, MARINOL (dronabinol) capsules, also available as a generic, and SYNDROS (dronabinol) oral solution. MARINOL is controlled in Schedule III, while SYNDROS is controlled in Schedule II under the CSA. Both MARINOL and SYNDROS are approved to treat anorexia associated with weight loss in patients with AIDS, and nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional treatment.

CBD is another cannabinoid constituent of the cannabis plant. In the United States, one CBD-containing product, Epidiolex oral solution, has received marketing approval by the FDA for the treatment of seizures associated with two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome, in patients 2 years of age and older. On September 28, 2018, the Drug Enforcement Administration placed FDA-approved product Epidiolex to be marketed into Schedule V of the CSA. Currently, CBD that is not contained in an FDA-approved product with less than 0.1 percent THC is controlled as a Schedule I substance under the CSA. CBD is not specifically listed in the schedules of the 1961, 1971, or 1988 International Drug Control conventions.

FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the notifications from the United Nations concerning these drug substances. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the WHO scheduling recommendations. Then, under section 201(d)(2)(B) of the CSA, HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations for control of substances under the 1971 Psychotropic Convention at the CND meeting in March 2019.

Comments regarding the WHO recommendations for control of Cannabis and Cannabis Resin; Dronabinol (*delta*-9-tetrahydrocannabinol); Tetrahydrocannabinol (Isomers of *delta*-9-tetrahydrocannabinol); Extracts and Tinctures of cannabis; Cannabidiol Preparations; Preparations Produced Either by Chemical Synthesis or as Preparation of Cannabis; under the 1961 Single Convention will also be forwarded to the relevant Agencies for consideration in developing the U.S. position regarding narcotic substances at the CND meeting.

Dated: February 25, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019-03662 Filed 2–28–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0671]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization; Scheduling Recommendations; Cyclopropyl Fentanyl; Methoxyacetyl Fentanyl; Ortho-Fluorofentanyl; Para-Fluorobutyrfentanyl; N-Ethylnorpentylone; and Four Additional Substances; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of comment.

SUMMARY: The Food and Drug Administration (FDA) is providing interested persons with the opportunity to submit written comments concerning recommendations by the World Health Organization (WHO) to impose international manufacturing and distributing restrictions, under international treaties, on certain drug substances. The comments received in response to this notice will be considered in preparing the United States' position on these proposals for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, in March 18–22, 2019. This notice is issued under the Controlled Substances Act (CSA).

DATES: Submit either electronic or written comments by March 14, 2019.

The short time period for the submission of comments is needed to ensure that the Department of Health and Human Services (HHS) may, in a timely fashion, carry out the required action and be responsive to the United Nations.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 14, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 14, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–0671 for ''International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization; Scheduling Recommendations; Cyclopropyl Fentanyl; Methoxyacetyl Fentanyl; *Ortho*-Fluorofentanyl; *Para*-Fluorobutyrfentanyl; *N*-Ethylnorpentylone; ADB–FUBINACA; FUB–AMB(MMB–FUBINACA_AMB–FUBINACA); ADB–CHMINACA; CUMYL–4CN–BINACA; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 5150, Silver Spring, MD 20993–0002, 301–796–3156, *james.hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (Psychotropic Convention). Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the Psychotropic Convention that the CND proposes to decide whether to add a drug or other substance to one of the schedules of the Psychotropic Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit notice of such information to the Secretary of HHS. The Secretary of HHS must then publish a summary of such information in the **Federal Register** and provide opportunity for interested persons to submit comments. The Secretary of HHS must then evaluate the proposal and furnish a recommendation to the Secretary of State that shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

As detailed in the following paragraphs, the Secretary of State has received notification from the Secretary-General of the United Nations (the Secretary-General) regarding five substances to be considered for control under the Psychotropic Convention. This notification reflects the recommendation from the 41st WHO Expert Committee for Drug Dependence (ECDD), which met in November 2018. In the **Federal Register** of October 10, 2018 (83 FR 50938), FDA announced the WHO ECDD review and invited interested persons to submit information for WHO's consideration.

The full text of the notification from the Secretary-General is provided in section II of this document. Section 201(d)(2)(B) of the CSA requires the Secretary of HHS, after receiving a notification proposing scheduling, to publish a notice in the **Federal Register** to provide the opportunity for interested persons to submit information and comments on the proposed scheduling action.

The United States is also a party to the 1961 Single Convention on Narcotic Drugs (1961 Single Convention). The Secretary of State has received a notification from the Secretary-General regarding four substances to be considered for control under this convention. The CSA does not require HHS to publish a summary of such information in the **Federal Register**. Nevertheless, to provide interested and affected persons an opportunity to submit comments regarding the WHO recommendations for narcotic drugs, the notification regarding these substances is also included in this **Federal Register** notice. The comments will be shared with other relevant agencies to assist the Secretary of State in formulating the position of the United States on the control of these substances. The HHS recommendations are not binding on the representative of the United States in discussions and negotiations relating to the proposal regarding control of substances under the 1961 Single Convention.

II. United Nations Notification

The formal notification from the United Nations that identifies the drug substances and explains the basis for the recommendations is reproduced as follows (non-relevant text removed):

Reference: NAR/CL.2/2019
WHO/ECDD41; 1961C-Art.3, 1971C-Art.2 CU
2019/35/DTA/SGB (A)

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that on 28 January 2019, he received a notification from the Director-General of the World Health Organization (WHO), pursuant to article 3, paragraphs 1 and 3 of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol (1961 Convention), and article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances of 1971 (1971 Convention) with the following recommendations regarding ten **New Psychoactive Substances (NPS)**:

Substances recommended to be added to Schedule I of the 1961 Convention:

—Parafluorobutyrylfentanyl
chemical name: *N*-(4-fluorophenyl)-*N*-[1-(2-phenylethyl)piperidin-4-yl]butanamide

—Ortho-fluorofentanyl
chemical name: *N*-(2-fluorophenyl)-*N*-[1-(2-phenylethyl)piperidin-4-yl]propanamide

—Methoxyacetyl fentanyl
chemical name: 2-methoxy-*N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]acetamide

—Cyclopropylfentanyl
chemical name: *N*-Phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]cyclopropanecarboxamide

Substances recommended to be added to Schedule II of the 1971 Convention:

—ADB–FUBINACA
chemical name: *N*-[(2*S*)-1-amino-3,3-dimethyl-1-oxobutan-2-yl]-1-[(4-fluorophenyl)methyl]-1*H*-indazole-3-carboxamide

—FUB–AMB (MMB–FUBINACA, AMB–FUBINACA)
chemical name: methyl (2*S*)-2-({1-[(4-fluorophenyl)methyl]-1*H*-indazole-3-carbonyl}amino)-3-methylbutanoate

—CUMYL–4CN–BINACA
chemical name: 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide

—ADB–CHMINACA (MAB–CHMINACA)
chemical name: *N*-[(2*S*)-1-amino-3,3-dimethyl-1-oxobutan-2-yl]-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide

—*N*-Ethylnorpentylone (ephylone)
chemical name: 1-(2*H*-1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one

In the letter from the Director-General of the World Health Organization to the Secretary-General, reference is also made to the recommendation by the forty-first meeting of the WHO Expert Committee on Drug Dependence (ECDD) to keep the following New Psychoactive Substance under surveillance:

—Paramethoxybutyrylfentanyl
chemical name: *N*-(4-methoxyphenyl)-*N*-[1-(2-phenylethyl)piperidin-4-yl]butanamide

In addition, in the letter from the Director-General of the World Health Organization to the Secretary-General, reference is made to the recommendations by the forty-first meeting of the WHO ECDD to keep the following two **pain-relieving medicines** under surveillance:

—Pregabalin
chemical name: (3*S*)-3-(aminomethyl)-5-methylhexanoic acid

—Tramadol
chemical name: (1*R**,2*R**)-2-[(dimethylamino)methyl]-1-(3methoxyphenyl)cyclohexan-1-ol

In accordance with the provisions of article 3, paragraph 2 of the 1961 Convention and article 2, paragraph 2 of the 1971 Convention, the Secretary-General hereby transmits the notification as annex I to the present note. In connection with the notification, WHO has also submitted the relevant extract from the report of the forty-first meeting of the WHO ECDD which is hereby transmitted as annex II. For time reasons, this notification and its annexes I and II are transmitted in English only. The notification will be transmitted in French and Spanish as soon as it becomes available.

Also in accordance with the same provisions, the notification from WHO will be brought to the attention of the sixty-second session of the Commission on Narcotic Drugs (from 14 to 22 March 2019) in document E/CN.7/2019/8 which will be made available on the website of the 62nd session of the CND:

http://www.unodc.org/unodc/en/commissions/CND/session/62_Session_2019/session-62-of-the-commission-on-narcotic-drugs.html.

In order to assist the Commission in reaching a decision, it would be appreciated if the Government could communicate any comments it considers relevant to the possible scheduling of New Psychoactive Substances recommended by WHO to be placed under international control under the 1961 Convention, namely:

—Parafluorobutyrylfentanyl; Ortho-fluorofentanyl; Methoxyacetyl fentanyl; Cyclopropylfentanyl

as well as any economic, social, legal, administrative or other factors that it considers relevant to the possible scheduling of New Psychoactive Substances recommended by WHO to be placed under international control under the 1971 Convention, namely:

—ADB-FUBINACA, FUB-AMB (MMB-FUBINACA, AMB-FUBINACA), CUMYL-4CN-BINACA, ADB-CHMINACA (MAB-CHMINACA), *N*-Ethylnorpentylone (ephylone).

Communications should be sent to the Executive Director of the United Nations Office on Drugs and Crime, c/o Secretary, Commission on Narcotic Drugs, P.O. Box 500, 1400 Vienna, Austria, email: unodc-sgb@un.org (fax: +43–1–26060–5885), at the latest by 28 February 2019.

1 February 2019

His Excellency

Mr. Michael Pompeo

Secretary of State of the United States of America

Annex I

Letter addressed to the Secretary-General of the United Nations from the Director-General of the World Health Organization, dated 24 January 2019

''The forty-first meeting of the WHO Expert Committee on Drug Dependence (ECDD) convened from 12 to 16 November 2018 at WHO headquarters in Geneva. The objective of this meeting was to carry out an in-depth evaluation of psychoactive substances in order to determine whether the World Health

Organization (WHO) should recommend if these substances should be placed under international control or if their level of control should be changed.

The forty-first WHO ECDD reviewed ten New Psychoactive Substances (NPS), five of which are synthetic opioids and two pain-relieving medicines; pregabalin and tramadol. The ECDD scheduling recommendations for these substances are detailed below.

In addition, the forty-first WHO ECDD critically reviewed cannabis and cannabis-related substances. The recommendations regarding cannabis and cannabis-related substances are communicated to you through a separate letter under the same date as this letter.

With reference to Article 3, paragraphs 1 and 3 of the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol, and Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances (1971), I am pleased to submit recommendations of the forty-first meeting of the ECDD regarding NPS and two pain-relieving medicines, tramadol and pregabalin, as follows:

New Psychoactive Substances

To be added to Schedule I of the Single Convention on Narcotic Drugs (1961):

—Parafluorobutyrylfentanyl
chemical name: N-(4-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide
—Ortho-fluorofentanyl
chemical name: N-(2-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]propanamide
—Methoxyacetyl fentanyl
chemical name: 2-methoxy-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]acetamide
—Cyclopropylfentanyl
chemical name: N-Phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]cyclopropanecarboxamide

To be added to Schedule II of the Convention on Psychotropic Substances (1971):

—ADB-FUBINACA
chemical name: N-[(2S)-1-amino-3,3-dimethyl-1-oxobutan-2-yl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide
—FUB-AMB (MMB-FUBINACA, AMB-FUBINACA)
chemical name: methyl (2S)-2-({1-[(4-fluorophenyl)methyl]-1H- indazole-3-carbonyl}amino)-3-methylbutanoate
—CUMYL-4CN-BINACA
chemical name: 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H- indazole-3-carboxamide
—ADB-CHMINACA (MAB-CHMINACA)
chemical name: N-[(2S)-1-amino-3,3-dimethyl-1-oxobutan-2-yl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide
—N-Ethylnorpentylone (ephylone)
chemical name: 1-(2H–1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one

To be kept under surveillance:

—Paramethoxybutyrylfentanyl
chemical name: N-(4-methoxyphenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide

Medicines

To be kept under surveillance:

—Pregabalin
chemical name: (3S)-3-(aminomethyl)-5-methylhexanoic acid
—Tramadol
chemical name: (1R*,2R*)-2-[(dimethylamino)methyl]-1-(3methoxyphenyl)cyclohexan-1-ol

The assessments and findings on which they are based are set out in detail in the forty-first report of the WHO Expert Committee on Drug Dependence. An extract of the report is attached in Annex II of this letter.

I am very pleased with the ongoing collaboration between WHO, the United Nations Office on Drugs and Crime (UNODC) and the International Narcotics Control Board (INCB), and in particular, how this collaboration has benefited the work of the WHO Expert Committee on Drug Dependence (including through the participation of UNODC and INCB in the forty-first meeting of the ECDD), and more generally, the implementation of the operational recommendations of the United Nations General Assembly Special Session (UNGASS) 2016.

[signed]

Annex II

Extract from the Report of the 41st Expert Committee on Drug Dependence: Fentanyl analogues, synthetic cannabinoids, cathinones, and medicines: pregabalin and tramadol

1. *Fentanyl Analogues*

1.1 *Para-fluoro-butyrylfentanyl*

Substance identification

Para-fluoro-butyrylfentanyl (N-(4-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide) is a synthetic analogue of the opioid analgesic fentanyl. Samples obtained from seizures and from other collections suggest that para-fluoro-butyrylfentanyl appears in powder, tablet, nasal spray and vaping form.

WHO review history

Para-fluoro-butyrylfentanyl has not been previously pre-reviewed or critically reviewed by the WHO Expert Committee on Drug Dependence (ECDD) [the Committee]. A direct critical review was proposed based on information brought to WHO's attention that para-fluoro-butyrylfentanyl poses serious risk to public health and has no recognised therapeutic use.

Similarity to known substances and effects on the central nervous system

Para-fluoro-butyrylfentanyl binds to μ-opioid receptors with high selectivity over κ- and δ-opioid receptors and has been shown to act as a partial agonist at the μ-opioid receptor. In animals, it produces typical opioid effects including analgesia, with a potency between that of morphine and fentanyl. In cases of non-fatal intoxication in humans, para-fluoro-butyrylfentanyl has produced signs and symptoms such as disorientation, slurred speech, unsteady gait, hypotension and pupil constriction that are consistent with an opioid mechanism of action.

Para-fluoro-butyrylfentanyl can be readily converted to its isomer *p*-fluoro-isobutyrylfentanyl (N-(4-fluorophenyl)-2-methyl-N-[1-(2-phenylethyl)piperidin-4-yl]propanamide), which is an opioid listed in Schedule I of the 1961 Single Convention on Narcotic Drugs.

Dependence potential

There are no studies of the dependence potential of this substance in humans or laboratory animals. However, based on its mechanism of action, para-fluoro-butyrylfentanyl would be expected to produce dependence similar to other opioid drugs.

Actual abuse and/or evidence of likelihood of abuse

There are no controlled studies of the abuse potential of para-fluoro-butyrylfentanyl and there is very little information on the extent of abuse. The substance has been detected in biological samples obtained from cases of fatal and non-fatal intoxication. Fatalities have been reported in some countries where the compound has been identified in biological fluids in combination with other drugs, including cases where death has been attributed to the effects of para-fluoro-butyrylfentanyl.

Therapeutic applications/usefulness

Para-fluoro-butyrylfentanyl is not known to have any therapeutic uses.

Recommendation

Para-fluoro-butyrylfentanyl is an opioid receptor agonist that has significant potential for dependence and

likelihood of abuse. The limited available evidence indicates that it has typical opioid adverse effects that include the potential for death due to respiratory depression. Para-fluoro-butyrylfentanyl has caused substantial harm and has no therapeutic usefulness. As it is liable to similar abuse and produces similar ill-effects as many other opioids placed in Schedule I of the 1961 Single Convention on Narcotic Drugs:

• ***Recommendation 1.1:*** The Committee recommended that Para-fluoro-butyryl fentanyl (N-(4-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide) be added to Schedule I of the 1961 Single Convention on Narcotic Drugs.

1.2 *Para-methoxy-butyryl fentanyl*

Substance identification

Para-methoxy-butyrylfentanyl (N-(4-methoxyphenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide) is a synthetic analogue of the opioid analgesic fentanyl. Samples obtained from seizures and from other collections suggest that para-methoxy-butyrylfentanyl occurs in powder, tablet, and nasal spray forms.

WHO review history

Para-methoxy-butyrylfentanyl has not been previously pre-reviewed or critically reviewed by the WHO ECDD. A critical review was proposed based on information brought to WHO's attention that para-methoxy-butyrylfentanyl poses serious risk to public health and has no recognised therapeutic use.

Similarity to known substances and effects on the central nervous system

Para-methoxy-butyrylfentanyl binds to μ-opioid receptors with high selectivity over κ- and δ-opioid receptors and has been shown to act as a partial agonist at the μ-opioid receptor. In animals, it produces typical opioid effects, including analgesia, and in some tests it has a potency higher than morphine and close to that of fentanyl.

Reported clinical features of intoxication in which para-methoxy-butyrylfentanyl is involved included the typical opioid effects of reduced level of consciousness, respiratory depression and pupil constriction. In some cases, treatment with the opioid antagonist naloxone was shown to reverse the drug-induced respiratory depression. While this is consistent with an opioid mechanism of action, it should be noted that in all such cases at least one other opioid was present.

Dependence potential

There are no studies of the dependence potential of this substance in humans or laboratory animals. However, based on its mechanism of action, Para-methoxy-butyrylfentanyl would be expected to produce dependence similar to other opioid drugs.

Abuse potential and/or evidence of likelihood of abuse

There are no controlled studies of the abuse potential of Para-methoxy-butyrylfentanyl and very little information on the extent of abuse. Para-methoxy-butyrylfentanyl has been detected in biological samples obtained from a limited number of acute intoxication cases. Reported clinical features are consistent with opioid effects and including respiratory depression. However, in all of the documented cases of severe adverse events associated with use of para-methoxy-butyrylfentanyl, other fentanyl derivatives were detected and hence the role of para-methoxy-butyrylfentanyl is not clear.

Therapeutic applications/usefulness

Para-methoxy-butyrylfentanyl is not known to have any therapeutic uses.

Recommendation

The limited available information indicates that para-methoxy-butyrylfentanyl is an opioid drug, and an analogue of the opioid analgesic fentanyl. There is evidence of its use in a limited number of countries with few reports of intoxication and no reports of deaths. In the intoxication cases, the role of para-methoxy-butyrylfentanyl was not clear due to the presence of other opioids. It has no therapeutic usefulness. At this time, there is little evidence of the impact of para-methoxy-butyrylfentanyl in causing substantial harm that would warrant its placement under international control.

• ***Recommendation 1.2:*** The Committee recommended that para-methoxy-butyrylfentanyl (N-(4-methoxyphenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide) be kept under surveillance by the WHO Secretariat.

1.3 *Ortho-fluorofentanyl*

Substance identification

Ortho-fluorofentanyl (N-(2-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]propanamide) is a synthetic analogue of the opioid analgesic fentanyl. It has two positional isomers (para-fluorofentanyl and meta-fluorofentanyl).

WHO review history

Ortho-fluorofentanyl has not been previously pre-reviewed or critically reviewed by the WHO ECDD. A direct critical review was proposed based on information brought to WHO's attention that ortho-fluorofentanyl poses a serious risk to public health and has no recognised therapeutic use.

Similarity to known substances and effects on the central nervous system

Receptor binding data show that ortho-fluorofentanyl binds to μ-opioid receptors with high selectivity over κ- and δ-opioid receptors. There were no preclinical or clinical studies available in the scientific literature. However, the clinical features present in non-fatal intoxication cases include characteristic opioid effects such as loss of consciousness, pupil constriction and respiratory depression. The effects of ortho-fluorofentanyl are responsive to the administration of the opioid antagonist naloxone, further confirming its opioid agonist mechanism of action.

Dependence potential

There are no studies of the dependence potential of ortho-fluorofentanyl in humans or laboratory animals. However, based on its mechanism of action, it would be expected to produce dependence similar to other opioid drugs.

Actual abuse and/or evidence of likelihood of abuse

There are no available preclinical or clinical studies to assess the abuse liability of ortho-fluorofentanyl. There is evidence of use from several countries, including seizures in Europe and the United States. A number of confirmed fatalities associated with the compound have been reported. Ortho-fluorofentanyl is being sold as heroin or an adulterant in heroin. A number of fatalities have been associated with this substance (1 in Europe and 16 in the United States since 2016). As a consequence of ortho-fluorofentanyl cross-reacting with standard fentanyl immunoassays, it is possible that deaths due to ortho-fluorofentanyl have been attributed to fentanyl and hence the number of recorded ortho-fluorofentanyl deaths may be an underestimate. Several countries in different parts of the world have controlled ortho-fluorofentanyl.

Therapeutic applications/usefulness

Ortho-fluorofentanyl is not known to have any therapeutic uses.

Recommendation

Ortho-fluorofentanyl is an opioid receptor agonist that has potential for dependence and likelihood of abuse. The limited available evidence indicates that it has typical opioid adverse effects that include the potential for death due to respiratory depression. Ortho-fluorofentanyl has caused substantial harm and has no therapeutic usefulness. As it is liable to similar abuse and produces similar ill-effects as many other opioids placed in Schedule I of the 1961 Single Convention on Narcotic Drugs:

• ***Recommendation 1.3:*** The Committee recommended that ortho-fluorofentanyl (N-(2-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]propanamide) be added to Schedule I of the 1961 Single Convention on Narcotic Drugs.

1.4 *Methoxyacetylfentanyl*

Substance identification

Methoxyacetylfentanyl (2-methoxy-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl] acetamide) is a synthetic analogue of the opioid fentanyl. Samples obtained from seizures and from other collections suggest that methoxyacetylfentanyl has appeared in powders, liquids, and tablets.

WHO review history

Methoxyacetylfentanyl has not been previously pre-reviewed or critically reviewed by the WHO ECDD. A critical review was proposed based on information brought to WHO's attention that methoxyacetylfentanyl poses serious risk to public health and has no recognised therapeutic use.

Similarity to known substances and effects on the central nervous system

Methoxyacetylfentanyl binds to μ-opioid receptors with high selectivity over κ- and δ-opioid receptors and has been shown to act as an agonist at the μ-opioid receptor. In animals, it produces analgesia with a potency higher than morphine and close to that of fentanyl. The analgesia was blocked by the opioid antagonist naltrexone, confirming its opioid mechanism of action.

In people using methoxyacetylfentanyl the most serious acute health risk is respiratory depression, which in overdose can lead to respiratory arrest and death. This is consistent with its opioid mechanism of action.

Dependence potential

There are no studies of the dependence potential of this substance in humans or laboratory animals. However, based on its mechanism of action, methoxyacetylfentanyl would be expected to produce dependence similar to other opioid drugs.

Actual abuse and/or evidence of likelihood of abuse

In the animal drug discrimination model of subjective drug effects, methoxyacetylfentanyl produced effects similar to those of morphine. It also decreased activity levels and both the discriminative and rate-decreasing effects were blocked by the opioid antagonist naltrexone. Based on its receptor action and these effects in animal models, it would be expected that methoxyacetylfentanyl would be subject to abuse in a manner comparable to other opioids.

There is evidence that methoxyacetyl-fentanyl has been used by injection and by nasal insufflation of powder. A large number of seizures of this substance have been reported in Europe and the United States. A number of deaths have been reported in Europe and the United States in which methoxyacetylfentanyl was detected in post-mortem samples. While other drugs were present in most of these cases, methoxyacetylfentanyl was deemed the cause of death or a major contributor to death in a significant proportion of these. Several countries have controlled methoxyacetylfentanyl in their national legislation.

Therapeutic applications/usefulness

Methoxyacetylfentanyl is not known to have any therapeutic uses.

The committee considered that methoxyacetylfentanyl is a substance with high abuse liability and dependence potential. It is an opioid agonist that is more potent than morphine and its use has contributed to a large number of deaths in different regions. It has no therapeutic usefulness and it poses a significant risk to public health. The Committee considered that the evidence of its abuse warrants placement under international control.

Recommendation 1.4: The Committee recommended that methoxyacetylfentanyl (2-methoxy-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl] acetamide) be added to Schedule I of the Single Convention on Narcotic Drugs of 1961.

1.5 *Cyclopropylfentanyl*

Substance identification

Cyclopropylfentanyl ((N-phenyl-N–1-(2-phenylethyl)-4-piperidyl) cyclopropanecarboxamide) is a synthetic analogue of the opioid fentanyl. Samples obtained from seizures and from other collections suggest that cyclopropylfentanyl has appeared in powders, liquids, and tablets.

WHO review history

Cyclopropylfentanyl has not been previously pre-reviewed or critically reviewed by the WHO ECDD. A critical review was proposed based on information brought to WHO's attention that cyclopropylfentanyl poses a serious risk to public health and has no recognised therapeutic use.

Similarity to known substances and effects on the central nervous system

Cyclopropylfentanyl binds selectively to the μ opioid receptors compared to δ and κ opioid receptors. There is no further information on the actions and effects of cyclopropylfentanyl from controlled studies. Based on its role in numerous deaths, as described below, it is reasonable to consider that cyclopropylfentanyl acts as a μ opioid receptor agonist similar to morphine and fentanyl.

Dependence potential

There are no preclinical or clinical studies published in the scientific literature concerning dependence on cyclopropylfentanyl. However, based on its mechanism of action, cyclopropylfentanyl would be expected to produce dependence similar to other opioid drugs.

Actual abuse and/or evidence of likelihood of abuse

A large number of seizures of cyclopropylfentanyl have been reported from countries in different regions. In some countries, this substance has been among the most common fentanyl analogues detected in post-mortem samples. In almost all of these deaths, cyclopropylfentanyl was determined to either have caused or contributed to death, even in presence of other substances.

Therapeutic applications/usefulness

Cyclopropylfentanyl is not known to have any therapeutic uses.

Recommendation

The available evidence indicates that cyclopropylfentanyl has opioid actions and effects. It has been extensively trafficked and has been used by several different routes of administration. Its use has been associated with a large number of documented deaths, and for most of these it has been the principal cause of death. Cyclopropylfentanyl has

no known therapeutic use and has been associated with substantial harm.

• ***Recommendation 1.5:*** The Committee recommended that cyclopropylfentanyl (N-Phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]cyclopropanecarboxamide) be added to Schedule I of the 1961 Single Convention on Narcotic Drugs.

2. *Synthetic cannabinoids*

2.1 ADB–FUBINACA

Substance identification

ADB–FUBINACA (N-[(2S)-1-amino-3,3-dimethyl-1-oxobutan-2-yl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide) is encountered as a powder, in solution or sprayed on herbal material that mimics the appearance of cannabis. It is sold as herbal incense or branded products with a variety of different names.

WHO review history

ADB–FUBINACA has not been previously pre-reviewed or critically reviewed by the WHO Expert Committee on Drug Dependence (ECDD). A critical review was proposed based on information brought to WHO's attention that ADB–FUBINACA poses serious risk to public health and has no recognised therapeutic use.

Similarity to known substances/effects on the central nervous system

ADB–FUBINACA is similar to other synthetic cannabinoid receptor agonists that are currently scheduled under the Convention on Psychotropic Substances of 1971. It binds to both the CB_1 and CB_2 cannabinoid receptors with full agonist activity as demonstrated by *in vitro* studies. The efficacy and potency of ADB–FUBINACA is substantially greater when compared to Δ^9-THC. Reported clinical features of intoxication include confusion, agitation, somnolence, hypertension and tachycardia, similar to other synthetic cannabinoid receptor agonists.

Dependence potential

No controlled experimental studies examining the dependence potential of ADB–FUBINACA in humans or animals were available. However, based on its central nervous system action as a full CB_1 agonist, ADB–FUBINACA would be expected to produce dependence in a manner similar to or more pronounced than cannabis.

Actual abuse and/or evidence of likelihood of abuse

ADB–FUBINACA is sold and used as a substitute for cannabis. It is invariably smoked or vaped (*i.e.* using an e-cigarette) but due to the nature of synthetic cannabinoid products (whereby drug components are introduced onto herbal material), users are unaware of which synthetic cannabinoid may be contained within such products. Evidence from case reports in which ADB–FUBINACA has been detected in biological samples has demonstrated that use of this substance has contributed to severe adverse reactions in humans including death. However, it was also noted that other substances, including other synthetic cannabinoids, were also present in the urine or blood following non-fatal and fatal intoxications and/or in the product used. Evidence of use has been reported in Europe, the United States and Asia. In recognition of its abuse and associated harm, ADB–FUBINACA has been placed under national control in a number of countries in several different regions.

Therapeutic applications/usefulness

There are currently no approved medical or veterinary uses of ADB–FUBINACA.

Recommendation

ADB–FUBINACA is a synthetic cannabinoid receptor agonist that is used by smoking plant material sprayed with the substance or inhaling vapour after heating. Its mode of action suggests the potential for dependence and likelihood of abuse. Its use has been associated with a range of severe adverse effects including death. These effects are similar to those produced by other synthetic cannabinoids which have a mechanism of action the same as that of ADB–FUBINACA and which are placed in Schedule II of the Convention on Psychotropic Substances of 1971. ADB–FUBINACA has no therapeutic usefulness.

• ***Recommendation 2.1***: The Committee recommended that ADB–FUBINACA (N-[(2S)-1-amino-3,3-dimethyl-1-oxobutan-2-yl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide) be added to Schedule II of the Convention on Psychotropic Substances of 1971.

2.2 *FUB–AMB*

Substance identification

FUB–AMB (chemical name: methyl (2S)-2-({1-[(4-fluorophenyl)methyl]-1H-indazole-3- carbonyl}amino)-3-methylbutanoate) is a synthetic cannabinoid that is also referred to as MMB–FUBINACA and AMB–FUBINACA. FUB–AMB is encountered as a powder, in solution or sprayed on herbal material that mimics the appearance of cannabis. It is sold as herbal incense or branded products with a variety of different names.

WHO review history

FUB–AMB has not been previously pre-reviewed or critically reviewed by the WHO ECDD. A critical review was proposed based on information brought to WHO's attention that FUB–AMB poses serious risk to public health and has no recognised therapeutic use.

Similarity to known substances/effects on the central nervous system

FUB–AMB is similar to other synthetic cannabinoid receptor agonists that are currently scheduled under the Convention on Psychotropic Substances of 1971. It binds to both the CB_1 and CB_2 cannabinoid receptors with full agonist activity as demonstrated by *in vitro* studies. The efficacy and potency of FUB–AMB is substantially greater than Δ^9-THC and it shares effects with other synthetic cannabinoids including severe central nervous system depression, resulting in slowed behaviour and speech.

Dependence potential

No controlled experimental studies examining the dependence potential of FUB–AMB in humans or animals were available. However, based on its central nervous system action as a full CB_1 agonist, FUB–AMB would be expected to produce dependence in a manner similar to or more pronounced than cannabis.

Actual abuse and/or evidence of likelihood of abuse

Consistent with its CB_1 cannabinoid receptor agonist activity, FUB–AMB produces complete dose-dependent substitution for the discriminative stimulus effects of Δ^9-THC in mice by various routes of administration. This suggests that it has abuse potential at least as great as that of Δ^9-THC.

Evidence of the use of FUB–AMB has been reported in Europe, the United States and New Zealand. It is usually smoked or vaped (*i.e.* using an e-cigarette) but due to the nature of synthetic cannabinoid products (whereby drug components are introduced onto herbal material), users are unaware of which synthetic cannabinoid may be contained within such products.

FUB–AMB use was confirmed in case reports of a mass intoxication in the United States with the predominant symptom being severe central nervous system depression, resulting in slowed behaviour and speech. It was reported that in New Zealand there were at least

20 deaths related to the use of FUB–AMB. It was noted that the amounts of FUB–AMB in confiscated products were 2 to 25 times greater than those reported in the incidents in the United States.

Therapeutic applications/usefulness

There are currently no approved medical or veterinary uses of FUB–AMB.

Recommendation

FUB–AMB is a synthetic cannabinoid receptor agonist that is used by smoking plant material sprayed with the substance or inhaling vapour after heating. Its mode of action suggests the potential for dependence and likelihood of abuse. Its use has been associated with a range of severe adverse effects including a number of deaths. Its mechanism of action and manner of use are similar to other synthetic cannabinoids placed in Schedule II of the Convention on Psychotropic Substances of 1971. FUB–AMB has no therapeutic usefulness.

• ***Recommendation 2.2:*** The Committee recommended that FUB–AMB (chemical name: methyl (2S)-2-({1-[(4-fluorophenyl)methyl]-1H-indazole-3-carbonyl}amino)-3-methylbutanoate) be added to Schedule II of the Convention on Psychotropic Substances of 1971.

2.3 *ADB–CHMINACA*

Substance identification

ADB–CHMINACA (N-[(2*S*)-1-amino-3,3-dimethyl-1-oxobutan-2-yl]-1-(cyclohexylmethyl)indazole-3-carboxamide) is a synthetic cannabinoid that is also referred to as MAB–CHMINACA. ADB–CHMINACA is encountered as a powder, in solution or sprayed on herbal material that mimics the appearance of cannabis. It is sold as herbal incense or branded products with a variety of different names.

WHO review history

ADB–CHMINACA has not been previously pre-reviewed or critically reviewed by the WHO ECDD. A critical review was proposed based on information brought to WHO's attention that ADB–CHMINACA poses a serious risk to public health and has no recognised therapeutic use.

Similarity to known substances/effects on the central nervous system

ADB–CHMINACA is similar to other synthetic cannabinoid receptor agonists that are currently scheduled under the Convention on Psychotropic Substances of 1971. It binds to both the CB_1 and CB_2 cannabinoid receptors with full agonist activity as demonstrated by *in vitro* studies. The efficacy and potency of ADB–CHMINACA is substantially greater than Δ^9-THC and it is among the most potent synthetic cannabinoids studied to date. It shares a profile of central nervous system mediated effects with other synthetic cannabinoids. ADB–CHMINACA demonstrates decreased locomotor activity in mice in a time and dose dependent fashion with a rapid onset of action and long-lasting effects.

Signs and symptoms of intoxication arising from use of ADB–CHMINACA have included tachycardia, unresponsiveness, agitation, combativeness, seizures, hyperemesis, slurred speech, delirium and sudden death. These are consistent with the effects of other synthetic cannabinoids.

Dependence potential

No controlled experimental studies examining the dependence potential of ADB–CHMINACA in humans or animals were available. However, based on its central nervous system action as a full CB_1 agonist, ADB–CHMINACA would be expected to produce dependence in a manner similar to or more pronounced than cannabis.

Actual abuse and/or evidence of likelihood of abuse

Consistent with its CB_1 cannabinoid receptor agonist activity, ADB–CHMINACA fully substituted for Δ^9-THC in drug discrimination tests. This suggests that it has abuse potential at least as great as that of Δ^9-THC.

Evidence of the use of ADB–CHMINACA has been reported in Europe, the United States and Japan, including cases of driving under the influence. It is invariably smoked or vaped (*i.e.* using an e-cigarette) but due to the nature of synthetic cannabinoid products (whereby drug components are introduced onto herbal material), users are unaware of which synthetic cannabinoid may be contained within such products.

ADB–CHMINACA use was analytically confirmed in case reports of several drug-induced clusters of severe illness and death in the United States. In Europe, 13 deaths with analytically confirmed use of ADB–CHMINACA were reported between 2014 and 2016, and another death occurred in Japan.

Therapeutic applications/usefulness

There are currently no approved medical or veterinary uses of ADB–CHMINACA.

Recommendation

ADB–CHMINACA is a synthetic cannabinoid receptor agonist that is used by smoking plant material sprayed with the substance or inhaling vapour after heating. It has effects that are similar to other synthetic cannabinoid receptor agonists placed in Schedule II of the Convention on Psychotropic Substances of 1971. Its mode of action suggests the potential for dependence and likelihood of abuse. Its use has resulted in numerous cases of severe intoxication and death. There is evidence that ADB–CHMINACA has been associated with fatal and non-fatal intoxications in a number of countries. The substance causes substantial harm and has no therapeutic usefulness.

Recommendation 2.3: The Committee recommended that ADB–CHMINACA (chemical name: N-[(2S)-1-amino-3,3-dimethyl-1-oxobutan-2-yl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide) be added to Schedule II of the Convention on Psychotropic Substances of 1971.

2.4 *CUMYL–4CN–BINACA*

Substance identification

CUMYL–4CN–BINACA (chemical name: 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide) is a synthetic cannabinoid. It is encountered as a powder, in solution or sprayed on herbal material that mimics the appearance of cannabis. It is sold as herbal incense or branded products with a variety of different names.

WHO review history

CUMYL–4CN–BINACA has not been previously pre-reviewed or critically reviewed by the WHO ECDD. A critical review was proposed based on information brought to WHO's attention that CUMYL–4CN–BINACA poses serious risk to public health and has no recognised therapeutic use.

Similarity to known substances/effects on the central nervous system

CUMYL–4CN–BINACA is similar to other synthetic cannabinoid receptor agonists that are currently scheduled under the Convention on Psychotropic Substances of 1971. It binds to both the CB_1 and CB_2 cannabinoid receptors with full agonist activity as demonstrated by *in vitro* studies. The efficacy and potency of CUMYL–4CN–BINACA is substantially greater than Δ^9-THC and it shares a profile of central nervous system mediated effects with other synthetic cannabinoids. Data have shown that it produced hypothermia in mice in common with other CB_1 cannabinoid receptor agonists.

Dependence potential

No controlled experimental studies examining the dependence potential of CUMYL–4CN–BINACA in humans or animals were available. However, based on its central nervous system action as a full CB_1 agonist, CUMYL–4CN–BINACA would be expected to produce dependence in a manner similar to or more pronounced than cannabis.

Actual abuse and/or evidence of likelihood of abuse

Consistent with its CB_1 cannabinoid receptor agonist activity, CUMYL–4CN–BINACA fully substituted for Δ^9-THC in drug discrimination tests. This suggests that it has abuse potential at least as great as that of Δ^9-THC.

Evidence of the use of CUMYL–4CN–BINACA has been currently reported only from Europe but this may be due to under-reporting including through lack of detection in other countries. In Europe, CUMYL–4CN–BINACA has been among the most frequently seized synthetic cannabinoids. It is invariably smoked or vaped (*i.e.* using an e-cigarette) but due to the nature of synthetic cannabinoid products (whereby drug components are introduced onto herbal material), users are unaware of which synthetic cannabinoid may be contained within such products.

A number of non-fatal intoxications involving CUMYL–4CN–BINACA have been reported. CUMYL–4CN–BINACA has been analytically confirmed as being present in 11 fatalities and 5 non-fatal intoxications in Europe. In 2 deaths, CUMYL–4CN–BINACA was the only drug present.

Therapeutic applications/usefulness

There are currently no approved medical or veterinary uses of CUMYL–4CN–BINACA.

Recommendation

CUMYL–4CN–BINACA is a synthetic cannabinoid receptor agonist that is used by smoking plant material sprayed with the substance or inhaling vapour after heating and is sold under a variety of brand names. It has effects that are similar to other synthetic cannabinoid receptor agonists placed in Schedule II of the Convention on Psychotropic Substances of 1971. Its mode of action suggests the potential for dependence and likelihood of abuse. There is evidence that CUMYL–4CN–BINACA has been associated with fatal and non-fatal intoxications in a number of countries. The substance causes substantial harm and has no therapeutic usefulness.

• ***Recommendation 2.4:*** The Committee recommended that CUMYL–4CN–BINACA (chemical name: 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide) be added to Schedule II of the Convention on Psychotropic Substances of 1971.

3. *Cathinone*

3.1 *N-ethylnorpentylone*

Substance identification

N-Ethylnorpentylone (chemical name: 1-(2H-1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one) is a ring-substituted synthetic cathinone analogue that originally emerged in the 1960s during pharmaceutical drug development efforts. It is also known as ephylone and incorrectly referred to as N-ethylpentylone. In its pure form, N-Ethylnorpentylone exists as a racemic mixture in form of a powder or crystalline solid. However, the substance is usually available as a capsule, powered tablet, pill and powder often sold as ''Ecstasy'' or MDMA. N-Ethylnorpentylone is also available in its own right and is advertised for sale by internet retailers.

WHO review history

N-Ethylnorpentylone has not been previously pre-reviewed or critically reviewed by the WHO Expert Committee on Drug Dependence (ECDD). A critical review was proposed based on information brought to WHO's attention that N-Ethylnorpentylone poses serious risk to public health and has no recognised therapeutic use.

Similarity to known substances/effects on the central nervous system

The information currently available suggests that N-Ethylnorpentylone is a psychomotor stimulant. N-Ethylnorpentylone users exhibit psychomotor stimulant effects including agitation, paranoia, tachycardia and sweating which are consistent with other substituted cathinone and central nervous system stimulant drugs. Not all reported adverse effects could be causally linked to N-Ethylnorpentylone alone, but there are indications that the observed effects are consistent with those seen with other psychomotor stimulants, with some instances involving cardiac arrest.

Its molecular mechanism of action is similar to the synthetic cathinones MDPV and α-PVP which are both listed in Schedule II of the Convention on Psychotropic Substances of 1971. *In vitro* investigations showed that N-Ethylnorpentylone inhibited the reuptake of dopamine, noradrenaline and, to a lesser extent, serotonin, which is consistent with closely related other substituted cathinones with known abuse liability and with cocaine.

There is no specific information available to indicate that N-Ethylnorpentylone may be converted into a substance currently controlled under the U.N. Conventions.

Dependence potential

No controlled experimental studies examining the dependence potential of N-Ethylnorpentylone in humans or animals were available. However, based on its action in the central nervous system, it would be expected that N-Ethylnorpentylone would have the capacity to produce a state of dependence similar to that of other stimulants such as the ones listed in Schedule II of the Convention on Psychotropic Drugs of 1971.

Actual abuse and/or evidence of likelihood of abuse

In rodent drug discrimination studies, N-Ethylnorpentylone fully substituted for methamphetamine and cocaine, and it was also shown to increase activity levels, suggesting it has potential for abuse similar to other psychomotor stimulants.

N-Ethylnorpentylone has been detected in biological fluids collected from a number of cases involving adverse effects including deaths. It is frequently used in combination with other drugs. Users may be unaware of the additional risks of harm associated with the consumption of N-Ethylnorpentylone either alone or in combination with other drugs. Users may also be unaware of the exact dose or compound being ingested.

A number of countries in various regions have reported use or detection of this compound in either seized materials or biological samples of individuals, including in cases of driving under the influence of drugs. Increased seizures of N-Ethylnorpentylone were reported by the United States over the last 2 years. N-Ethylnorpentylone has been detected in biological fluids collected from fatal and non-fatal cases of intoxication with a total of 125 toxicological reports associated with N-Ethynorpentylone between 2016 and 2018 having been documented.

The current available data therefore suggest that N-Ethylnorpentylone is liable to abuse.

Therapeutic applications/usefulness

N-Ethylnorpentylone is not known to have any therapeutic uses.

Recommendation

N-Ethylnorpentylone is a synthetic cathinone with effects that are similar to other synthetic cathinones listed as Schedule II substances in the Convention on Psychotropic Substances of 1971. Its mode of action and effects are consistent with those of other central nervous system stimulants such as cocaine, indicating that it has significant potential for dependence and likelihood of abuse. There is evidence of use of N-Ethylnorpentylone in a number of countries in various regions and this use has resulted in fatal and non-fatal intoxications. The substance causes substantial harm and has no therapeutic usefulness. Accordingly:

• ***Recommendation 3.1:*** The Committee recommended that N-Ethylnorpentylone (chemical name: 1-(2H-1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one) be added to Schedule II of the 1971 Convention on Psychotropic Substances.

4. *Medicines*

4.1 *Pregabalin*

Substance identification

Chemically, pregabalin is (3S)-3-(aminomethyl)-5-methylhexanoic acid.

WHO review history

Pregabalin was previewed by the 39th ECDD in November 2017.

Similarity to known substances/effects on the central nervous system

Pregabalin is an inhibitor of alpha-2-delta subunit containing voltage-gated calcium channels (VGCCs). Through this mechanism it decreases the release of neurotransmitters such as glutamate, noradrenaline and substance P. It has been suggested that pregabalin exerts its therapeutic effects by reducing the neuronal activation of hyper-excited neurons while leaving normal activation unaffected. The mechanism(s) by which pregabalin produces euphoric effects or induces physical dependence is unknown.

Despite being a chemical analogue of the neurotransmitter gamma aminobutyric acid (GABA), pregabalin does not influence GABA activity via either GABA receptors or benzodiazepine receptors. However, pregabalin has been found to produce effects that are similar to those produced by controlled substances, such as benzodiazepines, that increase GABA activity.

Dependence potential

Tolerance has been shown to develop to the effects of pregabalin, particularly the euphoric effects. A number of published reports have described physical dependence associated with pregabalin use in humans. The withdrawal symptoms that occur following abrupt discontinuation of pregabalin include insomnia, nausea, headache, anxiety, sweating, and diarrhoea. Current evidence suggests that the incidence and severity of withdrawal symptoms may be dose-related and hence those taking doses above the normal therapeutic range are most at risk of withdrawal. At therapeutic doses, withdrawal may be minimized by gradual dose tapering.

Actual abuse and/or evidence of likelihood to produce abuse

While some preclinical research using self-administration and conditioned place preference models has shown reinforcing effects of pregabalin, taken as a whole, the results from such research are contradictory and inconclusive.

In clinical trials, patients have reported euphoria, although tolerance develops rapidly to this effect. Human laboratory research is very limited and only a relatively low dose of pregabalin has been tested in a general population sample; the results indicated low abuse liability. However, a higher dose of pregabalin administered to users of alcohol or sedative/hypnotic drugs was rated similar to diazepam, indicative of abuse liability.

Pregabalin is more likely to be abused by individuals who are using other psychoactive drugs (especially opioids) with significant potential of adverse effects among these subpopulations. The adverse effects of pregabalin include dizziness, blurred vision, impaired coordination, impaired attention, somnolence, confusion and impaired thinking. Other reported harms associated with non-medical use of pregabalin include suicidal ideation and impaired driving. Users of pregabalin in a number of countries have sought treatment for dependence on the drug. Whilst pregabalin has been cited as the main cause of death in over 30 documented overdose fatalities, there are very few cases of fatal intoxications resulting from pregabalin use alone and the vast majority of instances involve other central nervous system depressants such as opioids and benzodiazepines.

There is only limited information regarding the scope and magnitude of the illicit trade in pregabalin, but there is evidence of illicit marketing through online pharmacies.

Pregabalin is under national control in many countries across different regions of the world.

Therapeutic applications/usefulness

Pregabalin is used for the treatment of neuropathic pain, including painful diabetic peripheral neuropathy and postherpetic neuralgia, fibromyalgia, anxiety and the adjunctive treatment of partial seizures. The exact indications for which pregabalin has received approval vary across countries. Pregabalin has also been used for conditions such as substance use disorders, alcohol withdrawal syndrome, restless legs syndrome and migraine.

Recommendation

The Committee noted that there has been increasing concern in many countries regarding the abuse of pregabalin. A number of cases of dependence have been reported and there are increasing reports of adverse effects. While these problems are concentrated in certain drug using populations, there is presently limited data on the extent of the problems related to pregabalin abuse in the general population. The Committee also noted that pregabalin has approved therapeutic uses for a range of medical conditions, including some for which there are few therapeutic options. Given the limitations in the available information regarding the abuse of pregabalin:

• ***Recommendation 4.1:*** The Committee recommended that pregabalin (chemical name: (3S)-3-(aminomethyl)-5-methylhexanoic acid) should not be scheduled but be kept under surveillance by the WHO Secretariat.

4.2 *Tramadol*

Substance identification

Tramadol (chemical name: (1R*,2R*)-2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexan-1-ol) is a white, bitter, crystalline and odourless powder soluble in water and ethanol. Tramadol is marketed as the hydrochloride salt and is available in a variety of pharmaceutical formulations for oral (tablets, capsules), sublingual (drops), intranasal, rectal (suppositories), intravenous, subcutaneous, and intramuscular administration. It is also available in combination with acetaminophen (paracetamol). Preparations of tramadol are available as immediate- and extended-release formulations.

WHO review history

Tramadol has been considered for critical review by the ECDD five times: in 1992, 2000, 2002, 2006 and 2014. Tramadol was pre-reviewed at the 39th

ECDD meeting in November 2017 and it was recommended that tramadol be subject to a critical review at a subsequent ECDD meeting. The Committee requested the WHO Secretariat to collect additional data for the critical review, including information on the extent of problems associated with tramadol misuse in countries. Also, the Committee asked for information on the medical use of tramadol including the extent to which low income countries, and aid and relief agencies, use and possibly rely on tramadol for provision of analgesia. In response to these requests, the WHO Secretariat collected data from Member States and relief agencies on the extent of medical use of tramadol, its misuse and on the level of control implemented in countries.

Similarity to known substances/effects on the central nervous system

Tramadol is a weak opioid analgesic that produces opioid-like effects primarily due to its metabolite, O-desmethyltramadol (M1). The analgesic effect of tramadol is also believed to involve its actions on noradrenergic and serotonergic receptor systems. The adverse effects of tramadol are consistent with its dual opioid and non-opioid mechanisms of action and they include dizziness, nausea, constipation and headache. In overdose, symptoms such as lethargy, nausea, agitation, hostility, aggression, tachycardia, hypertension and other cardiac complications, renal complications, seizures, respiratory depression and coma have been reported. Serotonin syndrome (a group of symptoms associated with high concentrations of the neurotransmitter serotonin that include elevated body temperature, agitation, confusion, enhanced reflexes, and tremor and might result in seizures and respiratory arrest) is a potential complication of the use of tramadol in combination with other serotonergic drugs. Tramadol has been detected in a number of deaths. It is often present along with other drugs, including opioids, benzodiazepines and antidepressants, but fatalities have also been reported due to tramadol alone.

Dependence potential

Evidence suggests that the development of physical dependence to tramadol is dose-related, and administration of supra-therapeutic doses leads to a similar dependence profile to morphine and other opioids such as oxycodone and methadone. There are reports of considerable number of people with tramadol dependence seeking help. Withdrawal symptoms include those typical of opioids such as pain, sweating, diarrhoea and insomnia as well as symptoms not normally seen with opioids and related to noradrenergic and serotonergic activity, such as hallucinations, paranoia, confusion and sensory abnormalities. Low dose tramadol use over extended periods is associated with a lower risk of dependence.

Actual abuse and/or evidence of likelihood of abuse

Consistent with its opioid mechanism of action, human brain imaging has shown that tramadol activates brain reward pathways associated with abuse. While reports from people administered tramadol in controlled settings have shown that it is identified as opioid-like and tramadol has reinforcing effects in experienced opioid users, these effects may be weaker than those produced by opioids such as morphine and may be partially offset by unpleasant effects of tramadol such as sweating, tremor, agitation, anxiety and insomnia.

Abuse, dependence and overdose from tramadol have emerged as serious public health concerns in countries across several regions. Epidemiological studies in the past have reported a lower tendency for tramadol misuse when compared to other opioids, but more recent information indicates a growing number of people abusing tramadol, particularly in a number of Middle Eastern and African countries. The sources of tramadol include diverted medicines as well as falsified medicines containing high doses of tramadol. Seizures of illicitly trafficked tramadol, particularly in African countries, have risen dramatically in recent years.

The oral route of administration has been the predominant mode of tramadol abuse as it results in a greater opioid effect compared to other routes. It is unlikely that tramadol will be injected to any significant extent. Abuse of tramadol is likely to be influenced by genetic factors such that some people will experience a much stronger opioid effect following tramadol administration compared to others. The genotype associated with a stronger opioid effect following tramadol administration occurs at different rates in populations across different parts of the world.

Many countries have placed tramadol under national control.

Therapeutic applications/usefulness

Tramadol is used to treat both acute and chronic pain of moderate to severe intensity. The conditions for which tramadol has been used include osteoarthritis, neuropathic pain, chronic low back pain, cancer pain and postoperative pain. It has also been used for treatment of restless leg syndrome and opioid withdrawal management. As is the case with abuse potential, the analgesic efficacy and the nature of adverse effects experienced are strongly influenced by genetic factors. Systematic reviews have reported that the ability of tramadol to control chronic pain such as cancer pain is less than optimal, and its use is associated with a relatively high prevalence of adverse effects.

Tramadol is listed on the national essential medicines lists of many countries across diverse regions, but it is not listed on the WHO Lists of Essential Medicines.

As an opioid analgesic available in generic forms which is not under international control, tramadol is widely used in many countries where access to other opioids for the management of pain is limited. It is also used extensively by international aid organisations in emergency and crisis situations for the same reasons.

Recommendations

The Committee was concerned by the increasing evidence for tramadol abuse in a number of countries in diverse regions, in particular the widespread abuse of tramadol in many low to middle income countries. Equally concerning was the clear lack of alternative analgesics for moderate to severe pain for which tramadol is used. The Committee was strongly of the view that the extent of abuse and evidence of public health risks associated with tramadol warranted consideration of scheduling, but the Committee recommended that tramadol not be scheduled at this time in order that access to this medication not be adversely impacted, especially in countries where tramadol may be the only available opioid analgesic or in crisis situations where there is very limited or no access at all to other opioids.

The Committee also strongly urged the WHO and its partners to address, as a high priority, the grossly inadequate access and availability of opioid pain medication in low income countries. WHO and its partners are also strongly encouraged to update and disseminate WHO pain management guidelines and to support both country-specific capacity building needs and prevention and treatment initiatives in order to address the tramadol crisis in low income countries. The Committee also recommended that WHO and its partners support countries in strengthening their regulatory capacity

and mechanisms for preventing the supply and use of falsified and substandard tramadol.

Recommendation 4.2: The Committee recommended that the WHO Secretariat continues to keep tramadol under surveillance, collect information on the extent of problems associated with tramadol misuse in countries and on its medical use, and that it be considered for review at a subsequent meeting.

III. Discussion

Although WHO has made specific scheduling recommendations for each of the drug substances, the CND is not obliged to follow the WHO recommendations. Options available to the CND for substances considered for control under the Psychotropic Convention include the following: (1) Accept the WHO recommendations; (2) accept the recommendations to control, but control the drug substance in a schedule other than that recommended; or (3) reject the recommendations entirely.

ADB–FUBINACA (chemical name: *N*-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide) is an indazole-based synthetic cannabinoid that is a potent, full agonist at CB_1 receptors. This substance functionally (biologically) mimics the effects of the structurally unrelated delta-9-tetrahydrocannabinol (THC), a Schedule I substance, and the main psychoactive chemical constituent in the cannabis (marijuana) plant. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. ADB–FUBINACA use has been associated with serious adverse events including death in the United States. There are no commercial or approved medical uses for ADB–FUBINACA. On April 10, 2017, ADB–FUBINACA was temporarily controlled as a Schedule I substance under the CSA. As such, additional permanent controls will be necessary to fulfill U.S. obligations if ADB–FUBINACA is controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

FUB–AMB (other names: MMB–FUBINACA; AMB–FUBINACA; chemical name: methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate) is an indazole-based synthetic cannabinoid that is a potent full agonist at CB_1 receptors. This substance functionally (biologically) mimics the effects of the structurally unrelated THC, a Schedule I substance, and the main psychoactive chemical constituent in marijuana. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. FUB–AMB use has been associated with serious adverse events including death in the United States. There are no commercial or approved medical uses for FUB–AMB. On November 3, 2017, FUB–AMB was temporarily controlled as a Schedule I substance under the CSA. As such, additional permanent controls will be necessary to fulfill U.S. obligations if FUB–AMB is controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

ADB–CHMINACA (other name: MAB–CHMINACA; chemical name: *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indole-3-carboxamide) is an indazole-based synthetic cannabinoid that is a potent full agonist at CB_1 receptors. This substance functionally (biologically) mimics the effects of the structurally THC, a Schedule I substance, and the main psychoactive chemical constituent in marijuana. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. ADB–CHMINACA use has been associated with serious adverse events including death in the United States. There are no commercial or approved medical uses for ADB–CHMINACA. On January 29, 2019, ADB–CHMINACA was permanently controlled as a Schedule I substance under the CSA. As such, additional permanent controls will not be necessary to fulfill U.S. obligations if ADB–CHMINACA is controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

CUMYL–4CN–BINACA (chemical name: 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide) is a clandestinely produced indazole-3-carboxamide based synthetic cannabinoid that has been sold online and used to mimic the biological effects of THC, the main psychoactive chemical constituent in marijuana. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. Hospital, scientific publications and law enforcement reports show that CUMYL–4CN–BUTINACA is abused for its psychoactive properties. CUMYL–4CN–BUTINACA has been associated with serious adverse events in the United States, in addition to multiple deaths in Europe. CUMYL–4CN–BUTINACA has no commercial or medical uses. On July 10, 2018, CUMYL–4CN–BUTINACA was temporarily controlled as a Schedule I substance under the CSA. As such, additional permanent controls will be necessary to fulfill U.S. obligations if CUMYL–4CN–BUTINACA is controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

Cyclopropyl fentanyl is a synthetic opioid that has a pharmacological profile similar to other Schedule I and II controlled opioid substances such as acetyl fentanyl, fentanyl, and other related μ-opioid receptor agonist substances. This clandestinely produced analog of fentanyl is associated with adverse events typically associated with opioid use such as respiratory depression, anxiety, constipation, tiredness, hallucinations, and withdrawal. Cyclopropyl fentanyl has been associated with numerous fatalities. At least 115 confirmed overdose deaths involving cyclopropyl fentanyl abuse have been reported in the United States. Cyclopropyl fentanyl has no commercial or currently accepted medical uses in the United States. On January 4, 2018, cyclopropyl fentanyl was temporarily placed into Schedule I of the CSA. As such, additional permanent controls will be necessary to fulfill U.S. obligations if Cyclopropyl fentanyl is controlled under Schedule I of the 1961 Single Convention.

Methoxyacetyl fentanyl has a pharmacological profile similar to other Schedule I and II opioid substances such as acetyl fentanyl, fentanyl, and other related μ-opioid receptor agonist substances. Evidence suggests that the pattern of abuse of fentanyl analogues, including methoxyacetyl fentanyl is similar to heroin and prescription opioid analgesics. Law enforcement and public health reports demonstrate that methoxyacetyl fentanyl is being illicitly distributed and abused. The Drug Enforcement Administration (DEA) is aware of at least two overdose deaths associated with the abuse of methoxyacetyl fentanyl in the United States. Methoxyacetyl fentanyl has no currently accepted medical use in treatment in the United States. On October 26, 2017, methoxyacetyl fentanyl was temporarily placed into Schedule I of the CSA. As such, additional permanent controls will be necessary to fulfill U.S. obligations if methoxyacetyl fentanyl is controlled under Schedule I of the 1961 Single Convention.

Para-fluorobutyrfentanyl shares pharmacological profile with other Schedule I (*e.g.* butyryl fentanyl) and II

(*e.g.,* fentanyl) opioid substances. *Para*-fluorobutyrfentanyl has no currently accepted medical use in treatment in the United States. The abuse of *para*-fluorobutyrfentanyl carries public health risks similar to that of heroin, fentanyl, and prescription opioid analgesics. On February 1, 2018, *para*-fluorobutyrfentanyl was temporarily placed into Schedule I of the CSA. As such, additional permanent controls will be necessary to fulfill U.S. obligations if *Para*-fluorobutyrfentanyl is controlled under Schedule I of the 1961 Single Convention.

Ortho-fluorofentanyl has a pharmacological profile similar to fentanyl and other related μ-opioid receptor agonist. *Ortho*-fluorofentanyl has no currently accepted medical use in treatment in the United States. *Ortho*-fluorofentanyl has been encountered by law enforcement and public health officials. The DEA has received reports for at least 13 confirmed overdose deaths involving *ortho*-fluorofentanyl abuse in the United States. On October 26, 2017, *ortho*-fluorofentanyl was temporarily placed into Schedule I of the CSA. As such, additional permanent controls will be necessary to fulfill U.S. obligations if *Ortho*-fluorofentanyl is controlled under Schedule I of the 1961 Single Convention.

N-ethylnorpentylone (other name: *N*-ethylpentylone) is a synthetic cathinone with stimulant and psychoactive properties similar to cathinone, a Schedule I substance. *N*-Ethylpentylone abuse has been associated with adverse health effects leading to emergency department admissions, and deaths. *N*-Ethylpentylone has no currently accepted medical use in treatment in the United States. On August 31, 2018, *N*-ethylnorpentylone was temporarily controlled as a Schedule I substance under the CSA. As such, additional permanent controls will be necessary to fulfill U.S. obligations if *N*-ethylnorpentylone is controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the notifications from the United Nations concerning these drug substances. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the WHO scheduling recommendations. Then, under section 201(d)(2)(B) of the CSA, HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations for control of substances under the Psychotropic Convention at the CND meeting in March 2019.

Comments regarding the WHO recommendations for control of Cyclopropyl fentanyl; Methoxyacetyl fentanyl; *Ortho*-fluorofentanyl; *Para*-fluorobutyrfentanyl; under the 1961 Single Convention will also be forwarded to the relevant Agencies for consideration in developing the U.S. position regarding narcotic substances at the CND meeting.

Dated: February 25, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–03663 Filed 2–28–19; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0077]

Patient Perspectives on the Impact of Rare Diseases: Bridging the Commonalities; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing a public meeting and an opportunity for public comment on ''Patient Perspectives on the Impact of Rare Diseases: Bridging the Commonalities.'' This public meeting is intended to obtain patients' and caregivers' perspectives on impacts of rare diseases on daily life and to assess commonalities that may help the Agency and medical product developers further understand and advance the development of treatments for rare diseases. Developing a treatment for a rare disease can present unique challenges, such as the small number of individuals affected and heterogenous etiologies and manifestations. While the differences between rare diseases are critically important, it is also important to assess commonalities to synergize product development in rare diseases. The goal of this meeting is to identify common issues and symptoms in rare diseases to help advance medical product development, potentially through the creation of novel endpoints or trial designs that focus on commonalities across a variety of rare diseases.

DATES: The public meeting will be held on April 29, 2019, from 1 p.m. to 5 p.m. The online registration to attend must be received by April 15, 2019. Onsite registration on the day of the meeting will be based on space availability. Submit either electronic or written comments on the public meeting by May 30, 2019. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 30, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of May 30, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–0077 for ''Patient Perspectives on the Impact of Rare Diseases: Bridging the Commonalities.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Eleanor Dixon-Terry, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5163, Silver Spring, MD 20933, 301–796–7634, *OOPDOrphanEvents@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The development of drugs, biologics, and devices for rare diseases involves unique challenges. The goal of this meeting is to identify common issues across rare diseases to help address some of these challenges. Rare diseases, often referred to as orphan diseases, are defined based on rarity of occurrence. Although these diseases are individually rare, collectively they are not. According to the National Institutes of Health, there are approximately 7,000 rare diseases affecting an estimated 30 million people in the United States. Many of these rare diseases are serious or life-threatening and many affect children.

The combination of government incentives and scientific advances has fueled extraordinary development in orphan drugs. Since the Orphan Drug Act was passed in 1983, drugs and biologics for over 750 rare disease indications have been developed and approved for marketing. In addition to drugs and biologics, there has been progress in the development of devices for rare diseases. Since 1990, the FDA has approved 74 medical devices for orphan indications under the Agency's Humanitarian Device Exemption program. Despite these successes, we recognize that thousands of rare diseases still have no approved treatments.

Developing a treatment for a rare disease can present unique challenges. Potential challenges include the small number of individuals affected, lack of understanding of the natural history of the disease, phenotypic heterogeneity, and lack of validated endpoints for use in clinical trials. Overcoming these challenges requires collaboration between many stakeholders, including scientists, product developers, regulators, policy makers, and patients. FDA is committed to working with stakeholders to advance treatment options for patients with rare diseases.

This public meeting will focus on the perspective of those affected by rare diseases. Patients, family members, and caregivers will provide important input on the impact of rare diseases on daily life. While the differences between rare diseases are critically important, this meeting will assess commonalities. The specific goal of this meeting is to identify common issues and symptoms in rare diseases to help advance medical product development, potentially through the generation of novel endpoints or trial designs that focus on commonalities across a variety of rare disease.

FDA will provide a summary document from this public meeting. This meeting will include participants from FDA, the patient community, caregivers, and other interested stakeholders.

II. Topics for Discussion at the Public Meeting

This public meeting will consist of panels of patients/caregivers and facilitated discussions. The aim of the meeting is to hear directly from patients with rare diseases and their caregivers and family members. The meeting will include patients with any rare disease and their caregivers and family members. It is not restricted to a specific rare disease or group of rare diseases.

The meeting will focus on several related topics. Specifically, FDA would like to hear directly from patients with rare diseases and their caregivers and family members about disease symptoms, treatment considerations, and factors relevant to participating in a clinical study or registry. We invite the public to register and participate in our panel discussions. A detailed agenda and meeting topics will be posted on the following website in advance of the meeting: *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm628352.htm.*

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website by April 15, 2019: *https://patient-perspectives-rare-diseases.eventbrite.com.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by April 15, 2019, 5 p.m. Eastern Time. Early registration is recommended because seating is

limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when their registration has been received. If time and space permit, onsite registration on the day of the public meeting will be provided beginning an hour prior to the start of the meeting.

If you need special accommodations due to a disability, please contact Eleanor Dixon-Terry, at 301–796–7634, or *OOPDOrphanEvents@fda.hhs.gov* no later than April 15, 2019.

Requests for Oral Presentations: Patients and patient representatives who are interested in presenting comments as part of the initial panel discussions will be asked to indicate in their registration which topic(s) they wish to address. These patients and patient representatives also must send to Eleanor Dixon-Terry (*OOPDOrphanEvents@fda.hhs.gov* or 301–796–7634) a brief summary of responses to the meeting topics by April 1, 2019. Details regarding the meeting agenda and topics will be available at *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm628352.htm.*

FDA will hold an open public comment period to give the public an opportunity to comment. Registration for open public comment will occur in the meeting registration and at the registration desk on the day of the meeting on a first-come, first-served basis.

Panelists and open public comment period speakers will be notified of their selection approximately 7 days before the public meeting. We will try to accommodate all patients and patient representatives who wish to speak, either through the panel discussion, an open public comment period, or audience participation; however, the duration of comments may be limited by time constraints.

Streaming Webcast of the Public Meeting: For those unable to attend in person, FDA will provide a live webcast of the meeting. To register for the streaming webcast of the public meeting, please visit the following website by April 28, 2019: *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm628352.htm.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm628352.htm.*

Dated: February 26, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–03675 Filed 2–28–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3244]

Enforcement Policy for Certain Marketed Tobacco Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Enforcement Policy for Certain Marketed Tobacco Products.'' FDA is issuing this draft guidance to provide information regarding FDA's enforcement policy for certain marketed tobacco products that become the subject of a not substantially equivalent (NSE) order. This policy primarily involves ''provisional'' tobacco products that become subject to NSE orders issued under the Federal Food, Drug, and Cosmetic Act (FD&C Act) (provisional tobacco products are tobacco products that were first introduced or delivered for introduction into interstate commerce for commercial distribution after February 15, 2007, and prior to March 22, 2011, and for which a substantial equivalence report (SE Report) was submitted no later than March 22, 2011). The draft guidance also provides information on FDA's enforcement policy when an applicant files a request for supervisory review of an NSE order.

DATES: Submit either electronic or written comments on the draft guidance by April 30, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–3244 for ''Enforcement Policy for Certain Marketed Tobacco Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this draft guidance to the Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Annette Marthaler, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1373, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Enforcement Policy for Certain Marketed Tobacco Products.'' FDA is issuing this draft guidance to provide information regarding FDA's enforcement policy for certain marketed tobacco products that become the subject of an NSE order. This policy primarily involves provisional tobacco products that become subject to NSE orders issued under section 910(a)(2)(B) of the FD&C Act (21 U.S.C. 387j(a)(2)(B)). This policy extends to new tobacco products created by modifying the quantity of a provisional tobacco product in a pending SE Report that become subject to NSE orders. The draft guidance also provides information on FDA's enforcement policy for when FDA receives from an applicant a request for supervisory review under 21 CFR 10.75 within 30 calendar days of the issue date of the NSE order. The draft guidance provides that for these new tobacco products, FDA intends to offer copies of those final scientific reviews that supported the basis of the Agency's decision to the applicant concurrent with the NSE order for provisional tobacco products.

II. Significance of Draft Guidance

FDA is issuing this draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Enforcement Policy for Certain Marketed Tobacco Products,'' and will supersede ''Enforcement Policy for Certain (Provisional) Tobacco Products That the Food and Drug Administration Finds Not Substantially Equivalent; Guidance for Industry and Tobacco Retailers'' (the availability of which was announced in the **Federal Register** (80 FR 55124, September 14, 2015)). It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons with access to the internet may obtain an electronic version of the draft guidance at either *https://www.regulations.gov* or *https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm.*

Dated: February 25, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–03657 Filed 2–28–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Retail Pharmacy Interest in Utilization of Innovative Educational Technology To Increase Human Papillomavirus (HPV) Vaccination Rates in Rural Areas; Correction

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services published a document in the **Federal Register** of February 15, 2019, concerning a request for information (RFI) for informational and planning purposes only. We would like to extend the deadline in order to provide more time to the public to submit their response.

FOR FURTHER INFORMATION CONTACT: Kara Elam, National Vaccine Program Office, Office of the Assistant Secretary for Health, Department of Health and Human Services; telephone (202) 690–5566; email: *nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the Federal of February 15, 2019, in FR Doc. 2019–02548, on page 4483, in the first column, correct the **DATES** caption to read:

DATES: Information from retail pharmacies with greater than 100 stores in geographic areas considered to be rural by the census definition (<50,000 population) should submit responses to this RFI as described in the addresses section below no later than midnight, 12:00 a.m. EDT on March 15, 2019.

Dated: February 25, 2019.

Tammy Beckham,

Acting Director, National Vaccine Program Office.

[FR Doc. 2019–03698 Filed 2–28–19; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Multi-site Clinical Trials.

Date: March 7, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Alumit Ishai, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5819, *alumit.ishai@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.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; HEALing Communities Study: Developing and Testing an Integrated Approach to Address the Opioid Crisis (Research Sites) (UM1—Clinical Trail Required).

Date: March 21, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Tracy L. Waldeck, Ph.D., Director, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4243, MSC 9550, Bethesda, MD 20892, 301–827–5844, *waldeckt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 25, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03565 Filed 2–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Advance analysis of MR images [2019/05 ZAG1 ZIJ–P (C1) 1].

Date: March 25, 2019.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–496–9667, *nijaguna.prasad@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03579 Filed 2–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings (R13).

Date: April 3–5, 2019.

Time: 7:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Tracy A. Shahan, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3F31, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5030, *tshahan@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 25, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03569 Filed 2–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and Related Research.

Date: April 5, 2019.

Time: 8:00 a.m. to 6:00 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: Dimitrios Nikolaos Vatakis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, Bethesda, MD 20892, 301–827–7480, *dimitrios.vatakis@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 25, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03570 Filed 2–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Member Conflict ZAG1 ZIJ–7 M1.

Date: March 22, 2019.

Time: 11:15 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Ph.D., Chief, Scientific Review Branch, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03587 Filed 2–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; RFP–NIAID–DAIT–NIHAI201800018: CIVICs Statistical, Data Management and Coordination Center (SDMCC).

Date: March 26, 2019.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Lee G. Klinkenberg, Ph.D., Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823, Bethesda, MD 20892–9834, 301–761–7749, *lee.klinkenberg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 25, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03583 Filed 2–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular Biology.

Date: March 20, 2019.

Time: 2:00 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: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0952, *espinozala@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: March 27, 2019.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 25, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03566 Filed 2–28–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Charles LoDico, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N02C, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc, 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226

Alere Toxicology Services, 1111 Newton St, Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc, Laboratory Specialists, Inc)

Alere Toxicology Services, 450 Southlake Blvd, Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc, Scientific Testing Laboratories, Inc; Kroll Scientific Testing Laboratories, Inc)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Laboratory, Inc, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438, (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 10221 North 32nd Street, Suite J, Phoenix, AZ 85028, 602–457–5411

DrugScan, Inc, 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc, 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Summer King,

Statistician.

[FR Doc. 2019–03643 Filed 2–28–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0040]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0112

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0112, Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before April 30, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0040] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2019–0040], and must be received by April 30, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include

any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data.

OMB Control Number: 1625–0112.

Summary: The Coast Guard collects, stores, and analyzes data transmitted by Long Range Identification and Tracking (LRIT) and Automatic Identification System (AIS) to enhance maritime domain awareness (MDA). Awareness and threat knowledge are critical for securing the maritime domain and the key to preventing adverse events. Data is also used for marine safety and environmental protection purposes.

Need: To ensure port safety and security and to ensure the uninterrupted flow of commerce.

Forms: None.

Respondents: Owners or operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 47,245 hours to 52,728 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–03647 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–1042]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0070

AGENCY: Coast Guard, DHS.

ACTION: Thirty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0070, Vessel Identification System; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before April 1, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–1042] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–1042], and must be received by April 1, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0070.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 58271, November 19, 2018) required by 44 U.S.C. 3506(c)(2).

That notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Vessel Identification System.

OMB Control Number: 1625–0070.

Summary: The Coast Guard established a nationwide vessel identification system (VIS) and centralized certain vessel documentation functions. VIS provides participating States and Territories with access to data on vessels numbered by States and Territories.

Need: Title 46 U.S.C. 12501 mandates the establishment of a VIS. Title 33 CFR part 187 prescribe the requirements of VIS.

Forms: None.

Respondents: Governments of States and Territories.

Frequency: Occasionally.

Hour Burden Estimate: The estimated burden has increased from 5,168 hours to 5,792 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–03644 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–1043]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0099

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0099, Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before April 1, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–1043] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–1043], and must be received by April 1, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0099.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 58269, November 19, 2018) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

OMB Control Number: 1625–0099.

Summary: The collection of information requires passenger vessels to post two placards that contain safety and operating instructions on the use of cooking appliance that use liquefied gas or compressed natural gas.

Need: Title 46 U.S.C. 3306(a)(5) authorizes the Coast Guard to prescribe regulations for the use of vessel stores of a dangerous nature. These regulations are prescribed in both uninspected and inspected passenger vessel regulations.

Forms: None.

Respondents: Owners and operators of passenger vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 6,429 hours to 6,758 hours a year due to an increase in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–03650 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0793]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0108

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0108, Standard Numbering System for Undocumented Vessels. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before April 1, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–0793] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0793], and must be received by April 1, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0108.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 54759, October 31, 2018) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Standard Numbering System for Undocumented Vessels.

OMB Control Number: 1625–0108.

Summary: The Standard Numbering System collects information on undocumented vessels and vessel owners operating on waters subject to the jurisdiction of the United States. Federal, State and local law enforcement agencies use information from the system for enforcement of boating laws or theft and fraud investigations. Since the September 11, 2001 terrorist attacks on the United States, the need has increased for identification of undocumented vessels to meet port security and other missions to safeguard the homeland.

Need: Subsection 12301(a) of Title 46 United States Code, requires undocumented vessels equipped with propulsion machinery of any kind to be numbered in the State where the vessel is principally operated. In 46 U.S.C. 12302 (a), Congress authorized the Secretary to prescribe, by regulation, a Standard Numbering System (SNS). The Secretary shall approve a State numbering system if that system is consistent with the SNS. The Secretary has delegated his authority under 46 U.S.C. 12301 and 12302 to Commandant of the U.S. Coast Guard. DHS Delegation No. 0170.1. The regulations requiring the numbering of undocumented vessels are in 33 CFR part 173, and regulations establishing the SNS for States to voluntarily carry out this function are contained in part 174.

In States that do not have an approved system, the Federal Government (U.S. Coast Guard) must administer the vessel numbering system. Currently, all 56 States and Territories have approved numbering systems. The approximate number of undocumented vessels registered by the States in 2017 was nearly 12 million.

The SNS collects information on undocumented vessels and vessel owners. States submit reports annually to the Coast Guard on the number, size, construction, etc., of vessels they have numbered. That information is used by the Coast Guard in (1) publication of an annual ''Boating Statistics'' report required by 46 U.S.C. 6102(b), and (2) for allocation of Federal funds to assist States in carrying out the Recreational Boating Safety (RBS) Program established by 46 U.S.C. chapter 131.

On a daily basis or as warranted, Federal, State, and local law enforcement personnel use SNS information from the States' numbering systems for enforcement of boating laws or theft and fraud investigations. In addition, when encountering a vessel suspected of illegal activity, information from the SNS increases officer safety by assisting boarding officers in determining how best to approach a vessel. Since, the September 11, 2001 terrorist attacks on the United States, the need has increased for identification of undocumented vessels and their owners for port security and other missions to safeguard the homeland, although the statutory requirement for numbering of vessels dates back to 1918.

Forms: None.

Respondents: Owners of all undocumented vessels propelled by machinery are required by Federal law to apply for a number from the issuing authority of the State in which the vessel is to be principally operated. In addition, States may require other vessels, such as sailboats or even canoes and kayaks, to be numbered. ''Owners'' may include individuals or households, non-profit organizations, and small businesses (*e.g.,* liveries that offer recreational vessels for rental by the public) or other for-profit organizations.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 257,896 hours to 256,472 hours a year due to a decrease in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–03649 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–1047]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0016

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0016, Welding and Hot Work Permits; Posting of Warning Signs; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before April 1, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–1047] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order

13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–1047], and must be received by April 1, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0016.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 64349, December 14, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Welding and Hot Work Permits; Posting of Warning Signs.

OMB Control Number: 1625–0016.

Summary: This information collection helps to ensure that waterfront facilities and vessels are in compliance with safety standards. A permit must be issued prior to welding or hot work at certain waterfront facilities; and, the posting of warning signs is required on certain facilities.

Need: The information is needed to ensure safe operations on certain waterfront facilities and vessels.

Forms: CG–4201, Welding and Hot Work.

Respondents: Owners and operators of certain waterfront facilities and vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 593 hours to 434 hours a year due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–03654 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–1044]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0103

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0103, Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before April 1, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–1044] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–1044], and must be received by April 1, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0103.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 58585, November 20, 2018) required by 44 U.S.C. 3506(c)(2). That notice elicited one comment. The comment was supportive of the Collection. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States.

OMB *Control Number:* 1625–0103.

Summary: The information is needed to reduce the number of ship collisions with endangered northern right whales. Coast Guard rules at 33 CFR part 169 establish two mandatory ship-reporting systems off the northeast and southeast coasts of the United States.

Need: The collection involves ships' reporting by radio to a shore-based authority when entering the area covered by the reporting system. The ship will receive, in return, information to reduce the likelihood of collisions between themselves and northern right whale—an endangered species—in the areas established with critical-habitat designation.

Forms: None.

Respondents: Operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 188 hours to 137 hours a year due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–03655 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–1046]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0001

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0001, Report of Marine Casualty & Chemical Testing of Commercial Vessel Personnel; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before April 1, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–1046] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–1046], and must be received by April 1, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0001.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 62597, December 4, 2018) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Report of Marine Casualty & Chemical Testing of Commercial Vessel Personnel.

OMB Control Number: 1625–0001.

Summary: Marine casualty information is needed for CG investigations of commercial vessel casualties involving death, vessel damage, etc., as mandated by Congress. Chemical testing information is needed to improve CG detection/reduction of drug use by mariners.

Need: Section 6101 of 46 U.S.C., as delegated by the Secretary of Homeland Security to the Commandant, authorizes the Coast Guard to prescribe regulations for the reporting of marine casualties involving death, serious injury, material loss of property, material damage affecting the seaworthiness of a vessel, or significant harm to the environment. It also requires information on the use of alcohol be included in a marine casualty report. Section 7503 of 46 U.S.C. authorizes the Coast Guard to deny the issuance of licenses, certificates of registry, and merchant mariner's documents (seaman's papers) to users of dangerous drugs. Similarly, 46 U.S.C. 7704 requires the Coast Guard to revoke such papers unless a holder provides satisfactory proofs that the holder has successfully completed a rehabilitation program acceptable to the U.S. Coast Guard and is determined to be, by a competent substance abuse professional, free from misuse of chemical substances and that the risk of subsequent misuse of chemical substances is sufficiently low to justify returning to safety-sensitive positions.

Forms: CG–2692, Report of Marine Casualty, Commercial Diving Casualty, or OCS-related Casualty; CG–2692A, Barge Addendum; CG–2692B, Report of Mandatory Chemical Testing Following a Serious Marine Incident Involving Vessels in Commercial Service; CG–2692C, Personnel Casualty Addendum; CG–2692D, Involved Persons and Witnesses Addendum.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 22,939 hours to 22,980 hours a year due to an increase in the estimated number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–03653 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0881]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0003

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0003, Boating Accident Report; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before April 1, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–0881] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy

of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0881], and must be received by April 1, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0003.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 58588, November 20, 2018) required by 44 U.S.C. 3506(c)(2). That notice elicited one comment from the National Association of State Boating Law Administrators (NASBLA). NASBLA suggested that there are changes to the information collection request because the associated BAR form was updated with standardized terminology and numbering implemented by the 2012 rulemaking titled ''Changes to Standard Numbering System, Vessel Identification System, and Boating Accident Report Database'' (77 FR 18689). The standardized language should improve the utility of the form, but does not change the estimated need, frequency or burden on the public for purposes of this request to OMB. The NASBLA also mentioned that a project workgroup is developing recommendations for the maritime reporting structure and systems, but the recommendations would not be ready by the end of the 60 day comment period on that notice. We welcome the recommendations in this notice's 30 comment period as well as in future renewals of this ICR. Without any substantive recommendations, no changes have been made to the Collections.

Information Collection Request

Title: Boating Accident Report.

OMB Control Number: 1625–0003.

Summary: The Coast Guard Boating Accident Report form (CG–3865, OMB Control Number 1625–0003) is the data collection instrument that ensures compliance with the implementing regulations and Title 46 U.S.C. 6102(b) that require the Secretary to collect, analyze and publish reports, information, and statistics on marine casualties.

Need: Title 46 U.S.C. 6102(a) requires a uniform marine casualty reporting system, with regulations prescribing casualties to be reported and the manner of reporting. The statute requires a State to compile and submit to the Secretary (delegated to the U.S. Coast Guard) reports, information, and statistics on casualties reported to the State. Implementing regulations are contained in Title 33 CFRs Subchapter S—Boating Safety, Part 173—Vessel Numbering and Casualty and Accident Reporting, Subpart C—Casualty and Accident Reporting and Part 174—State Numbering and Casualty Reporting Systems, Subpart C—Casualty Reporting System Requirements, and Subpart D—State reports.

States are required to forward copies of the reports or electronically transmit accident report data to the Coast Guard within 30 days of their receipt of the report as prescribed by 33 CFR 174.121 (forwarding of casualty or accident reports). The accident report data and statistical information obtained from the reports submitted by the State reporting authorities are used by the Coast Guard in the compilation of national recreational boating accident statistics.

Forms: CG–3865, Recreational Boating Accident Report.

Respondents: Federal regulations (33 CFR 173.55) require the operator of any uninspected vessel that is numbered or used for recreational purposes to submit an accident report to the State authority when:

(1) A person dies; or

(2) A person is injured and requires medical treatment beyond first aid; or

(3) Damage to the vessel and other property totals $2,000 or more, or there is a complete loss of the vessel; or

(4) A person disappears from the vessel under circumstances that indicate death or injury.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden remains 2,500 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–03651 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0882]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0047

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its

approval for the following collection of information: 1625–0047, Plan Approval and Records for Vital System Automation; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before April 1, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–0882] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0882], and must be received by April 1, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0047.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 58270, November 19, 2018) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Plan Approval and Records for Vital System Automation.

OMB Control Number: 1625–0047.

Summary: This collection pertains to the vital system automation on commercial vessels that is necessary to protect personnel and property on board U.S.-flag vessels.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to promulgate regulations for the safety of personnel and property on board vessels. Various sections within parts 61 and 62 of Title 46 of the Code of Federal Regulations contain these rules.

Forms: None.

Respondents: Owners, operators, shipyards, designers, and manufacturers of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 46,500 hours to 68,475 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–03652 Filed 2–28–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0005]

Agency Information Collection Activities: Application-Permit-Special License Unlading-Lading-Overtime Services

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in

the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than April 30, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0005 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to: *CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application-Permit-Special License Unlading-Lading-Overtime Services.

OMB Number: 1651–0005.

Form Number: CBP Form 3171.

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to CBP Form 3171.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The Application-Permit-Special License Unlading-Lading-Overtime Services (CBP Form 3171) is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers. It is also used to request overtime services from CBP officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel, including the boarding of a vessel for preliminary supplies, ship's stores, sea stores, or equipment not to be reladen. CBP Form 3171 is provided for 19 CFR 4.10, 4.30, 4.39, 4.91, 10.60, 24.16, 122.38, 123.8, 146.32 and 146.34. This form is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=3171.*

E*stimated Number of Respondents:* 1,500.

Estimated Number of Annual Responses per Respondent: 266.

Estimated Number of Total Annual Responses: 399,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 53,187.

Dated: February 26, 2019.

Seth D Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–03668 Filed 2–28–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0019]

Agency Information Collection Activities: Vessel Entrance or Clearance Statement

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than April 1, 2019) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information

collection was previously published in the **Federal Register** (83 FR 58589) on November 20, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Vessel Entrance or Clearance Statement.

OMB Number: 1651–0019.

Form Number: CBP Form 1300.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Abstract: CBP Form 1300, *Vessel Entrance or Clearance Statement,* is used to collect essential commercial vessel data at time of formal entrance and clearance in U.S. ports. The form allows the master to attest to the truthfulness of all CBP forms associated with the manifest package, and collects information about the vessel, cargo, purpose of entrance, certificate numbers, and expiration for various certificates. It also serves as a record of fees and tonnage tax payments in order to prevent overpayments. CBP Form 1300 was developed through agreement by the United Nations Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. This form is authorized by 19 U.S.C. 1431, 1433, and 1434, and provided for by 19 CFR part 4, and accessible at *http://www.cbp.gov/newsroom/publications/forms?title=1300.*

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Number of Responses per Respondent: 22.

Estimated Total Annual Responses: 264,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 132,000.

Dated: February 26, 2019.

Seth D Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–03690 Filed 2–28–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0008]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 30, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0008 in the body of the letter, the agency name and Docket ID USCIS–2005–0024. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2005–0024;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2005–0024 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form G–325A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information to be collected will be used by USCIS to determine eligibility of discretionary deferred action on a case-by-case basis, for certain family members of military personnel who currently serve on active duty or in the Selected Reserve of the Ready Reserve, military personnel who previously served on active duty or in the Selected Reserve of the Ready Reserve (who were not dishonorably discharged) whether they are living or deceased, and Delayed Entry Program (DEP) enlistees (as well as DEP enlistees themselves).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–325A is 1,550 and the estimated hour burden per response is 2.15 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,875 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $116,250.

Dated: February 22, 2019.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–03626 Filed 2–28–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0047]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Employment Eligibility Verification

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 30, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0047 in the body of the letter, the agency name and Docket ID USCIS–2006–0068. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0068;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0068 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–9; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Employers, employees, recruiters and referrers for a fee (limited to agricultural associations, agricultural employers, or farm labor contractors), and state employment agencies. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. This information collection is necessary for employers, agricultural recruiters and referrers for a fee, and state employment agencies to verify the identity and employment authorization of individuals hired (or recruited or referred for a fee, if applicable) for employment in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–9 is 55,400,000 for employers and recruiters and referrers with estimated hour burden per response is 0.33 hour; 55,400,000 for individuals/households with estimated hour burden per response is 0.17 hour; and 20,000,000 for record keepers with an estimated hour burden response of 0.08 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 29,300,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: February 22, 2019.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–03628 Filed 2–28–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0029]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Waiver of Grounds of Inadmissibility

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 1, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0029 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on November 5, 2018, at 83 FR 55392, allowing for a 60-day public comment period. USCIS received one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0042 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–601; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–601 is necessary for USCIS to determine whether the applicant is eligible for a waiver of inadmissibility under section 212 of the Immigration and Nationality Act. Furthermore, this information collection is used by individuals who are seeking Temporary Protected Status (TPS).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–601 is 17,000 and the estimated hour burden per paper response is 1.75 hours and the estimated hour burden per electronically-filed response is 1.33 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 29,750 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $6,311,250.

Dated: February 22, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–03630 Filed 2–28–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2641–19; DHS Docket No. USCIS–2018–0005]

RIN 1615–ZB78

Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for Sudan, Nicaragua, Haiti, and El Salvador

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces actions to ensure its continued compliance with the preliminary injunction order of the U.S. District Court for the Northern District of California in *Ramos* v. *Nielsen,* No. 18–cv–01554 (N.D. Cal. Oct. 3, 2018) (''preliminary injunction''). Beneficiaries under the Temporary Protected Status (TPS) designations for Sudan, Nicaragua, Haiti, and El Salvador will retain their TPS while the preliminary injunction remains in effect, provided that an individual's TPS is not withdrawn under Immigration and Nationality Act (INA) section 244(c)(3) or 8 CFR 244.14 because of ineligibility.

DHS is further announcing it is automatically extending through January 2, 2020, the validity of TPS-related Employment Authorization Documents (EADs), Forms I–797, Notice of Action (Approval Notice), and Forms I–94 (Arrival/Departure Record) (collectively ''TPS-Related Documentation''), as specified in this notice, for beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador, provided that the affected TPS beneficiaries remain otherwise individually eligible for TPS. *See* INA section 244(c)(3). This Notice also provides information explaining DHS's plans to issue a subsequent notice that will describe the steps DHS will take after January 2, 2020, should continued compliance with the preliminary injunction be necessary.

DATES: The TPS designations of Sudan, Nicaragua, Haiti, and El Salvador will remain in effect, as required by the preliminary injunction order of the U.S. District Court for the Northern District of California in *Ramos* v. *Nielsen,* No. 18–cv–01554 (N.D. Cal. Oct. 3, 2018), so long as the preliminary injunction remains in effect. TPS for those countries will not be terminated unless and until any superseding, final, non-appealable judicial order permits the implementation of such terminations. Information on the status of the preliminary injunction will be available at *http://uscis.gov/tps.*

Further, DHS is automatically extending the validity of TPS-Related Documentation for those beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador, as specified in this Notice. Those documents will remain in effect for nine months through January 2, 2020, provided the individual's TPS is not withdrawn under INA section 244(c)(3) or 8 CFR 244.14 because of ineligibility. *See* 83 FR 54764 (Oct. 31, 2018) (notice stating that should *Ramos* injunction continue beyond April 2, 2019, DHS will publish a subsequent notice to extend TPS-related Documentation of eligible beneficiaries under the TPS designations of Sudan, Nicaragua, Haiti, and El Salvador for nine months from that date).

In the event the preliminary injunction is reversed and that reversal becomes final, DHS will allow for an orderly transition period, as described in the ''Possible Future Action'' section of this Notice.

FOR FURTHER INFORMATION CONTACT:

- You may contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, by mail at 20 Massachusetts Avenue NW, Washington, DC 20529–2060, or by phone at 800–375–5283.
- For further information on TPS, please visit the USCIS TPS web page at *http://www.uscis.gov/tps.* You can find specific information about this continuation of the TPS benefits for eligible individuals under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador by selecting the respective country's page from the menu on the left side of the TPS web page.
- If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283.
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
IER—U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights Section
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

Background on Temporary Protected Status (TPS)

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the INA, or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain

in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.

- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to lawful permanent resident status.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a country's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or been terminated); or
  - Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid on the date TPS terminates.

Purpose of This Action

Through this **Federal Register** notice, the Department of Homeland Security (DHS) announces actions to ensure its continued compliance with the preliminary injunction order of the U.S. District Court for the Northern District of California in *Ramos* v. *Nielsen,* No. 18–cv–01554 (N.D. Cal. Oct. 3, 2018). Beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador will retain their TPS while the preliminary injunction remains in effect, provided that an individual's TPS status is not withdrawn under INA section 244(c)(3) because of ineligibility. *See also* 8 CFR 244.14.

DHS is further announcing it is automatically extending through January 2, 2020, the validity of TPS-related Employment Authorization Documents (EADs), Forms I–797, Notice of Action (Approval Notice), and Forms I–94 (Arrival/Departure Record) (collectively ''TPS-Related Documentation''), as specified in this notice, for beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador, provided that the affected TPS beneficiaries remain otherwise individually eligible for TPS. *See* INA section 244(c)(3). This notice also provides information explaining DHS's plans to issue a subsequent notice that will describe the steps DHS will take after January 2, 2020, to continue its compliance with the preliminary injunction should such compliance be required.

Automatic Extension of EADs

Through this **Federal Register** notice, DHS automatically extends through January 2, 2020, the validity of EADs with the category codes ''A–12'' or ''C–19'' and one of the expiration dates shown below that have been issued under the TPS designations of Sudan, Nicaragua, Haiti, and El Salvador: [1]

07/22/2017
11/02/2017
01/05/2018
01/22/2018
03/09/2018
11/02/2018
01/05/2019
04/02/2019
07/22/2019
09/09/2019

Additionally, a beneficiary under the TPS designations for Sudan, Nicaragua, Haiti, or El Salvador who applied for a new EAD but who has not yet received his or her new EAD is also covered by this automatic extension, provided that the EAD he or she possesses contains one of the expiration dates noted in the chart above. Such individuals may show this **Federal Register** notice and their EAD to employers to demonstrate they have employment authorization and that their TPS-Related Documentation has been extended through January 2, 2020. This Notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Automatic Extension of Forms I–94 (Arrival/Departure Record) and Forms I–797 (Notice of Action (Approval Notice))

In addition, through this **Federal Register** notice, DHS automatically extends through January 2, 2020, the validity periods of the following Forms I–94 and Forms I–797, Notice of Action (Approval Notice), previously issued to eligible beneficiaries granted TPS under the designations for Sudan, Nicaragua, Haiti, and El Salvador:

Country	Beginning date of validity:	End date of validity:
Sudan	May 3, 2016	Nov. 2, 2017.
	Nov. 3, 2017	Nov. 2, 2018.
Nicaragua	July 6, 2016	Jan. 5, 2018.
	Jan. 6, 2018	Jan. 5, 2019.
Haiti	Jul. 23, 2017	Jan. 22, 2018.
	Jan. 23, 2018	July 22, 2019.
El Salvador	Sept. 10, 2016	Mar. 9, 2018.
	Mar. 10, 2018	Sept. 9, 2019.

However, the extension of this validity period applies only if the eligible TPS beneficiary properly filed for TPS re-registration during the most recent DHS-announced registration period for the applicable country, or in the case of Haiti, during the most recent such re-registration period or the re-registration period prescribed in the May 24, 2017 **Federal Register** notice (82 FR 23830), or has a re-registration application that remains pending. In addition, the extension does not apply if the TPS of any such individual has been finally withdrawn. This notice does not extend the validity date of any TPS-related Form I–94 or Form I–797, Notice of Action (Approval Notice), issued to a TPS beneficiary that contains an end date not on the chart above where the individual has failed to file for TPS re-registration, or where his or her re-registration request has been finally denied.

[1] This chart also includes the expired EADs for those beneficiaries under the TPS designations for Haiti and El Salvador with pending re-registration applications who were issued individual notices automatically extending their expired EADs through January 17, 2019 and March 4, 2019. For verification of employment eligibility and immigration status, USCIS is auto-extending the expired EADs, bearing the dates July 22, 2017 and January 22, 2018 (for EADs issued to beneficiaries under the TPS designation for Haiti), and March 9, 2018 and September 9, 2019 (for EADs issued to beneficiaries under the TPS designation for El Salvador).

Application Procedures

Current beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador do not need to pay a fee or file any application, including the Application for Employment Authorization (Form I–765), to maintain their TPS benefits through January 2, 2020, if they have properly re-registered for TPS during the most recent DHS-announced registration period for their country. TPS beneficiaries who have failed to re-register properly for TPS during the last registration period may still file Form I–821 (Application for Temporary Protected Status) but must demonstrate ''good cause'' for failing to re-register on time, as required by law. *See* INA section 244(c)(3)(C) (TPS beneficiary's failure to register without good cause in form and manner specified by DHS is ground for TPS withdrawal); 8 CFR 244.17(b) and Instructions to Form I–821. Any eligible beneficiary under the TPS designations for Sudan, Nicaragua, Haiti, or El Salvador who either does not possess an EAD that is automatically extended by this Notice, or wishes to apply for a new EAD may file Form I–765 with appropriate fee (or fee waiver request). If approved, USCIS will issue an EAD with a January 2, 2020, expiration date. Similarly, USCIS will issue an EAD with a January 2, 2020 expiration date for those with pending EAD applications that are ultimately approved.

Possible Future Action

If it becomes necessary to comply with statutory requirements for TPS re-registration during the pendency of the Court's Order or any superseding court order concerning the beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador, DHS may announce re-registration procedures in a future **Federal Register** notice. *See* section 244(c)(3)(C) of the INA; 8 CFR 244.17.

In the event the preliminary injunction is reversed and that reversal becomes final, DHS will allow for an orderly transition period, ending on the later of (a) 120 days from the effective date of such a superseding, final order, or (b) on the Secretary's previously-announced effective date for the termination of TPS designations for each individual country, as follows:

- Sudan—N/A; [2]
- Nicaragua—N/A;
- Haiti—July 22, 2019;
- El Salvador—September 9, 2019.

To the extent that a **Federal Register** notice has auto-extended TPS-Related Documentation beyond the 120-day orderly transition period, DHS reserves the right to issue a subsequent **Federal Register** notice announcing an expiration date for the documentation that corresponds to the last day of the 120-day orderly transition period.

Additional Notes

Nothing in this notice affects DHS's ongoing authority to determine on a case-by-case basis whether TPS beneficiaries continue to meet the individual eligibility requirements for TPS described in section 244(c) of the INA and the implementing regulations in part 244 of Title 8 of the Code of Federal Regulations.

Notice of Compliance With Court Order Enjoining the Implementation and Enforcement of Determinations To Terminate the TPS Designations of Sudan, Nicaragua, Haiti, and El Salvador

As required by the preliminary injunction order of the U.S. District Court for the Northern District of California in *Ramos* v. *Nielsen,* No. 18–cv–01554 (N.D. Cal. Oct. 3, 2018), the previously-announced determinations to terminate the existing designations of TPS for Sudan, Nicaragua, Haiti, and El Salvador [3] will not be implemented or enforced unless and until the District Court's Order is reversed and that reversal becomes final for some or all of these four countries.

In further compliance with the Order, DHS is publishing this **Federal Register** Notice automatically extending the validity of the TPS-Related Documentation specified above in the Supplementary Information section of this Notice for nine months from April 2, 2019 through January 2, 2020, for eligible beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador.

Any termination of TPS-Related Documentation for beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador will go into effect on the later of: (a) 120 days from the effective date of any superseding, final, non-appealable judicial order that permits the implementation of such terminations, or (b) on the Secretary's previously-announced effective date for the termination of TPS designations for each individual country. To the extent that a subsequent **Federal Register** notice has auto-extended TPS-Related Documentation beyond the 120-day orderly transition period, DHS reserves the right to issue another **Federal Register** notice invalidating the documents at the end of the orderly transition period.

DHS will issue another **Federal Register** notice approximately 30 days before January 2, 2020, that will either extend TPS-Related Documentation for an additional nine months from January 2, 2020, or provide appropriate procedures for obtaining renewed TPS documentation for all affected eligible beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador. DHS will continue to issue **Federal Register** notices at nine-month intervals so long as the preliminary injunction remains in place and will continue its commitment to a 120-day orderly transition period, as described above.

All TPS beneficiaries must continue to maintain their TPS eligibility by meeting the requirements for TPS in INA section 244(c) and part 244 of Title 8 of the Code of Federal Regulations. DHS will continue to adjudicate any pending TPS re-registration and pending late initial applications for affected beneficiaries from the four countries, and continue to make appropriate individual TPS withdrawal decisions in accordance with existing procedures if an individual no longer maintains TPS eligibility. DHS may continue to announce periodic re-registration procedures for eligible TPS beneficiaries in accordance with the INA and DHS regulations. Should the preliminary injunction order remain in effect, DHS will take appropriate steps to continue its compliance with the preliminary injunction and all statutory requirements.

Claire M. Grady,

Under Secretary for Management and Senior Official Performing the Duties of the Deputy Secretary.

Approved Forms To Demonstrate Continuation of Lawful Status and TPS-Related Employment Authorization

- *This **Federal Register** Notice March 1, 2019.*

○ Through operation of this ***Federal Register*** notice, the existing EADs of affected TPS beneficiaries are

[2] Any 120-day transition period would end later than the Secretary's previously-announced effective dates for the termination of TPS designations for Sudan and Nicaragua (November 2, 2018 and January 5, 2019 respectively).

[3] *See* Termination of the Designation of Sudan for Temporary Protected Status, 82 FR 47228 (Oct. 11, 2017); Termination of the Designation of Nicaragua for Temporary Protected Status, 82 FR 59636 (Dec. 15, 2017); Termination of the Designation of Haiti for Temporary Protected Status, 83 FR 2648 (Jan. 18, 2018); Termination of the Designation of El Salvador for Temporary Protected Status, 83 FR 2654 (Jan. 18, 2018).

automatically extended through January 2, 2020.

- A beneficiary granted TPS under the designations for Sudan, Nicaragua, Haiti, and El Salvador may show a copy of this notice, along with his or her specified EAD, to his or her employer to demonstrate identity and continued TPS-related employment eligibility for purposes of meeting the Employment Eligibility Verification (Form I–9) requirements.
- Alternatively, such a TPS beneficiary may choose to show other acceptable documents that are evidence of identity and employment eligibility as described in the Instructions to Employment Eligibility Verification (Form I–9).
- Finally, such a TPS beneficiary may show a copy of this notice, along with his or her specified EAD, Form I–94, or Form I–797, Notice of Action (Approval Notice), as evidence of his or her lawful status to law enforcement, federal, state, and local government agencies, and private entities.

• *Employment Authorization Document (EAD)*

Am I eligible to receive an automatic extension of my current EAD through January 2, 2020 using this ***Federal Register*** *notice?*

Yes. This **Federal Register** notice automatically extends your EAD through January 2, 2020, if you are a national of Sudan, Nicaragua, Haiti, or El Salvador (or an alien having no nationality who last habitually resided in Sudan, Nicaragua, Haiti, or El Salvador) who has TPS, and your EAD contains a category code of A–12 or C–19 and one of the expiration dates shown below:

07/22/2017
11/02/2017
01/05/2018
01/22/2018
03/09/2018
11/02/2018
01/05/2019
04/02/2019
07/22/2019
09/09/2019

When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find lists of acceptable documents on the ''Acceptable Documents'' web page for Form I–9 at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which is evidence of employment authorization), or you may present an acceptable receipt for List A, List B, or List C documents as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *http://www.uscis.gov/I-9Central.*

An EAD is an acceptable document under List A.

If your EAD has category code of A–12 or C–19 and an expiration date from the column below, you may show your expired EAD along with this **Federal Register** notice to complete Form I–9:	Enter this date in Section 1 of Form I–9:	Your employer must reverify your employment authorization by:
07/22/2017	Jan. 2, 2020	Jan. 3, 2020.
11/02/2017	Jan. 2, 2020	Jan. 3, 2020.
01/05/2018	Jan. 2, 2020	Jan. 3, 2020.
01/22/2018	Jan. 2, 2020	Jan. 3, 2020.
03/09/2018	Jan. 2, 2020	Jan. 3, 2020.
11/02/2018	Jan. 2, 2020	Jan. 3, 2020.
01/05/2019	Jan. 2, 2020	Jan. 3, 2020.
04/02/2019	Jan. 2, 2020	Jan. 3, 2020.
07/22/2019	Jan. 2, 2020	Jan. 3, 2020.
09/09/2019	Jan. 2, 2020	Jan. 3, 2020.

If you want to use your EAD with one of the specified expiration dates above, and that date has passed, then you may also provide your employer with a copy of this **Federal Register** notice, which explains that your EAD has been automatically extended temporarily through January 2, 2020.

What documentation may I present to my employer for Employment Eligibility Verification (Form I–9) if I am already employed but my current TPS-related EAD is set to expire?

Even though your EAD has been automatically extended, your employer is required by law to ask you about your continued employment authorization, and you will need to present your employer with evidence that you are still authorized to work. Once presented, you may correct your employment authorization expiration date in Section 1 and your employer should correct the EAD expiration date in Section 2 of Form I–9. *See* the subsection titled, ''What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my employment authorization has been automatically extended?'' for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that your EAD has been automatically extended through January 2, 2020. Your employer may need to re-inspect your automatically extended EAD to check the expiration date and Category code if your employer did not keep a copy of this EAD when you initially presented it.

The last day of the automatic EAD extension for eligible beneficiaries under the TPS designations for Sudan, Nicaragua, Haiti, and El Salvador is January 2, 2020. Before you start work on January 3, 2020, your employer is required by law to reverify your employment authorization. At that time,

you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 Instructions to reverify employment authorization.

By January 3, 2020, your employer must complete Section 3 of the current version of the form, Form I–9 07/17/17 N, and attach it to the previously completed Form I–9, if your original Form I–9 was a previous version. Your employer can check USCIS' I–9 Central web page at *http://www.uscis.gov/I-9Central* for the most current version of Form I–9.

Note that your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

Can I seek a new EAD?

You do not need to apply for a new EAD in order to benefit from this automatic extension. However, if you want to obtain a new EAD valid through January 2, 2020, you must file an Application for Employment Authorization (Form I–765) and pay the Form I–765 fee (or request a fee waiver). Note, if you do not want a new EAD, you do not have to file Form I–765 or pay the Form I–765 fee. If you do not want to request a new EAD now, you may also file Form I–765 at a later date and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application. You may file the application for a new EAD either before or after your current EAD has expired.

If you are unable to pay the application fee and/or biometric services fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *http://www.uscis.gov/tps*. Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Note: If you have a Form I–821 and/or Form I–765 that was still pending as of April 2, 2019, then you should not file either application again. If your pending TPS application is approved, you will be granted TPS through January 2, 2020. Similarly, if you have a pending TPS-related application for an EAD that is approved, it will be valid through the same date.

Can my employer require that I provide any other documentation to prove my status, such as proof of my citizenship from Sudan, Nicaragua, Haiti, or El Salvador?

No. When completing Form I–9, including reverifying employment authorization, employers must accept any documentation that appears on the Form I–9 ''Lists of Acceptable Documents'' that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of citizenship or proof of re-registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such documents as a valid List A document so long as the EAD reasonably appears to be genuine and relates to the employee. Refer to the Note to Employees section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Employment Eligibility Verification (Form I–9) using my automatically extended employment authorization for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job on or before January 2, 2020, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and enter January 2, 2020, as the ''expiration date''; and

b. Enter your Alien Number/USCIS number or A-Number where indicated (your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix).

2. For Section 2, your employer should:

a. Determine if the EAD is auto-extended:

An employee's EAD has been auto-extended if it contains a category code of A–12 or C–19 and an expiration date shown below:

07/22/2017
11/02/2017
01/05/2018
01/22/2018
03/09/2018
11/02/2018
01/05/2019
04/02/2019
07/22/2019
09/09/2019

If it has been auto-extended, the employer should:

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write January 2, 2020, as the expiration date.

Before the start of work on January 3, 2020, employers are required by law to reverify the employee's employment authorization in Section 3 of Form I–9.

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my employment authorization has been auto-extended?

If you presented a TPS-related EAD that was valid when you first started your job and your EAD has now been automatically extended, your employer may need to re-inspect your current EAD if they do not have a copy of the EAD on file. You may, and your employer should, correct your previously completed Form I–9 as follows:

1. For Section 1, you may:

a. Draw a line through the expiration date in Section 1;

b. Write January 2, 2020, above the previous date; and

c. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended:

An employee's EAD has been auto-extended if it contains a category code of A–12 or C–19 and an expiration date shown below:

07/22/2017
11/02/2017
01/05/2018
01/22/2018
03/09/2018
11/02/2018
01/05/2019
04/02/2019
07/22/2019
09/09/2019

If it has been auto-extended:

b. Draw a line through the expiration date written in Section 2;

c. Write January 2, 2020, above the previous date; and

d. Initial and date the correction in the Additional Information field in Section 2.

Note: This is not considered a reverification. Employers do not need to complete Section 3 until either this notice's automatic extension of EADs has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. By January 3, 2020, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for these employees by providing the employee's Alien Registration number (A#) or USCIS number as the document number on Form I–9 in the document number field in E-Verify.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

If you have employees who provided a TPS-related EAD with an expiration date that has been auto-extended by this notice, you should dismiss the ''Work Authorization Documents Expiring'' case alert. Before this employee starts to work on January 3, 2020, you must reverify his or her employment authorization in Section 3 of Form I–9. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I9Central@dhs.gov*. Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) (formerly the Office of Special Counsel for Immigration-Related Unfair Employment Practices) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov*.

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov*. Calls are accepted in English, Spanish, and many other languages. Employees or applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from an employee's Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee because of the TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and on the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov*.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, and/or that may be used by DHS to determine whether you have TPS or other immigration status. Examples of such documents are:

(1) Your current EAD;

(2) Your auto-extended EAD with a copy of this **Federal Register** notice, providing an automatic extension of your currently expired or expiring EAD;

(3) A copy of your Form I–94, (Arrival/Departure Record), or Form I–797, Notice of Action (Approval Notice), that has been auto-extended by this notice and a copy of this notice;

(4) Any other relevant DHS-issued document that indicates your immigration status or authorization to be in the United States, or that may be used by DHS to determine whether you have such status or authorization to remain in the United States.

Check with the government agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the SAVE program to confirm the current immigration status of applicants for public benefits. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at the following link: *https://save.uscis.gov/casecheck/,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the

agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE website at *http://www.uscis.gov/save*.

[FR Doc. 2019–03783 Filed 2–28–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0051]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Monthly Report on Naturalization Papers

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 1, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0051 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on December 11, 2019, at 83 FR 63667, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2005–0032 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Monthly Report on Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form N–4; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local or Tribal Government. This form is used by the clerk of courts that administer the oath of allegiance for naturalization to notify the USCIS of all persons to whom the oath was administered. The information is used by the USCIS to update its alien files and records to indicate that the aliens are now citizens; develop an audit trail on the certificates of naturalization; and determine the payments to be made to the courts for reimbursement of their expenses in connection with the naturalization process.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–4 is 160, it is estimated that each respondent will respond an average of 12 times a year, and the estimated hour burden per response is 0.5 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 960 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,200.

Dated: February 22, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–03629 Filed 2–28–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–NEW]

Agency Information Collection Activities; Trust Land Mortgage Lender Checklist

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 30, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Ms. Sharlene Round Face, 1849 C Street NW, MS 4642–MIB, Washington, DC 20240; or by email to *sharlene.roundface@bia.gov.* Please reference OMB Control Number 1076–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Sharlene Round Face by email at *sharlene.roundface@bia.gov,* or by telephone at 202–208–3615.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This information collection is authorized under 25 U.S.C. 5135; 70 Stat. 62 and 25 CFR152.34 that provides individual Indians owning an individual tract of trust land the ability to mortgage their land for the purpose of home acquisition and construction, home improvements, and economic development. The BIA is required to review the trust mortgage application for conformity to statutes, policies, and regulations. Mortgage documents submitted to BIA from the lending institutions will assist BIA staff in their analysis to approve or disapprove a trust land mortgage application request.

Title of Collection: Trust Land Mortgage Document Submittal.

OMB Control Number: 1076–NEW.

Form Number: Trust Land Mortgage Lender Checklist.

Type of Review: New.

Respondents/Affected Public: Mortgage lenders.

Total Estimated Number of Annual Respondents: 25.

Total Estimated Number of Annual Responses: 70.

Estimated Completion Time per Response: Varies per application from 1 hour to 40 hours, with an average of 20 hours.

Total Estimated Number of Annual Burden Hours: 1,400 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: One time collection, per mortgage application.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–03709 Filed 2–28–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027262; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Arizona State Museum, University of Arizona (ASM) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the ASM. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the ASM at the address in this notice by April 1, 2019.

ADDRESSES: John McClelland, NAGPRA Coordinator, P.O. Box 210026, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–2950.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Arizona State Museum, University of Arizona, Tucson, AZ. The human remains and associated funerary objects were removed from Pima County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the ASM professional staff in consultation with

representatives of the Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Cocopah Tribe of Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In 1964, human remains representing, at minimum, one individual were removed from AZ Y:2:12(ASM), located in Yuma County, AZ, during the Lower Gila Survey Project. These human remains were not identified as such when they were collected. Collections from this site were received by ASM during or after 1964, but were not assigned an accession number. In 2010, museum staff discovered these human remains in the site survey collections. No known individuals were identified. The one associated funerary object is a shell fragment. This site includes a cremation area containing burned bones that had been eroding out of dunes. Information shared during consultations suggests that the placement of shells with a burial is consistent with Yuman mortuary practices in this region.

In 1964, human remains representing, at minimum, two individuals were removed from AZ Y:3:15(ASM), located on the east bank of Big Ethel Wash at its confluence with the Gila River in Yuma County, AZ, during the Lower Gila Survey Project. The 72 associated funerary objects are 67 ceramic sherds, one cobble, one glass fragment, one metal artifact, one metate, and one stone. This site is described as a historic Yuman site consisting of a refuse area and two cremation pits.

Archeological studies suggest that Yuman groups have resided along the Lower Colorado River and the Lower Gila River in Southern Arizona for at least 1,000 years. The presence of groups in these areas is documented historically by Spanish explorers who, in the 1600s and 1700s, encountered people living in widely scattered *rancherias* around the Lower Colorado River and the Lower Gila River. Several lines of archeological evidence, such as similarities in material culture, settlement patterns, ceremonial sites and practices, residential architecture, and subsistence patterns suggest that the Yuman cultural traditions arose from an earlier, archeological tradition typically referred to as Patayan. Evidence of early Patayan occupation in the Lower Colorado River is poorly preserved largely due to the inundation of large areas by the Lake Mohave and Lake Havasu reservoirs, and the intensive agricultural practices of surrounding valleys. However, permanent settlements dating to around 1500 are documented in the Mohave Valley, as well as contemporaneous geoglyphs and trail networks linking ceremonial, occupational, and resource exploitation areas. In the Lower Gila River area, evidence of Patayan occupation prior to the introduction of ceramics is poorly documented due to the ephemeral nature of such early sites. However, following the introduction of ceramics around A.D. 700, settlements in the area became more permanent. Archeological evidence for these more permanent settlements include sites with pit houses and roasting or fire pits, and artifact assemblages containing similar ceramic sherds, chipped stone, and ground stone.

Although there is evidence of some co-residence between Patayan and Hohokam groups, especially in the vicinity of Gila Bend, Patayan groups shared distinct cultural practices. These practices include settlement and subsistence patterns characterized by semi-permanent or permanent farming *rancherias* scattered across the floodplain of the Lower Gila River and the Lower Colorado River that are typically comprised of two to seven pit houses. Produce from these farms was augmented by seasonal gathering of resources from temporary camps along the river tributaries, as well as adjacent deserts and mountains. Large ceremonial sites served as gathering places for multiple families, and are characterized by shrines, petroglyphs, earth figures, intaglios, dance pathways, and rock alignments located on desert terraces adjacent to the floodplains. All Patayan groups and their descendants practiced cremation. Given the relative lack of archeological evidence on Patayan groups, archeologists have had difficulty establishing a relationship between prehispanic Patayan groups and specific historic Yuman tribes. However, archeologists have found the Patayan to be culturally affiliated with the Fort Mojave Tribe, Colorado River Indian Tribes, Cocopah Tribe, and the Fort Yuma-Quechan Tribe.

Modern Yuman groups in Southern Arizona, including the Fort Mojave Tribe, Colorado River Indian Tribes, Cocopah Tribe, and the Fort-Yuma Quechan Tribe, share oral traditions which trace their origins to the time of creation at Spirit Mountain (Avikwaame). According to this oral tradition, the Creator led the seven original Yuman groups to their various ancestral homelands, naming certain geographical markers along the way. Cultural informants cited place names from their oral traditions—including settlements, geographic features, and significant locations—that correlate to geographical areas of occupation defined by archeological material culture. These oral traditions suggest cultural continuity between modern Yuman groups and the earlier archeological Patayan culture.

Determinations Made by the Arizona State Museum

Officials of Arizona State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 73 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort Mojave Indian Tribe of Arizona, California & Nevada; and the Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona (hereafter referred to as ''The Affiliated Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to John McClelland, NAGPRA Coordinator, P.O. Box 210026, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–2950, by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Affiliated Tribes may proceed.

The Arizona State Museum is responsible for notifying The Consulted

Tribes and The Affiliated Tribes that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03578 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027271; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The Filson Historical Society, Louisville, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Filson Historical Society has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Filson Historical Society. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Filson Historical Society at the address in this notice by April 1, 2019.

ADDRESSES: Maureen Lane, The Filson Historical Society, 1310 S Third Street, Louisville, KY 40206, telephone (502) 635–5083, email *Maureen@filsonhistorical.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Filson Historical Society, Louisville, KY. The human remains were removed from Sims, Morton County, ND.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Filson Historical Society's professional staff in consultation with representatives of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana, and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

History and Description of the Remains

Between 1890 and 1915, human remains representing, at minimum, one individual were removed from Sims in Morton County, ND. The partial remains of the individual were initially loaned to the Filson Historical Society in 1935, and then were donated to the collection in 1951 by Lewis A. Walter, who obtained them from Bernhart George Letzring (b. 1885). There are very few records regarding these human remains. A note was found stating ''Sacajawea's skull and many beads and elks teeth taken from her grave on his father's [Albert Letzring] homestead place in North Dakota.'' It is not believed that this individual is Sacajawea. No known individuals were identified. U.S. Census records place Bernhart Letzring and his father Albert Letzring in Sims, Morton County, ND, between 1890 and 1915, where Albert acquired a homestead consisting of 160 acres of land. Land Patent records (see Land Patent BLM Serial Nr: NDMTAA 055412) accessible through the U.S. Department of the Interior, Bureau of Land Management Land Patents website show the exact location of the Letzring homestead (*https://glorecords.blm.gov/search/default.aspx*). U.S. Census records show that after 1915, Letzring moved to Florida.

The note found in the Filson's records stated that ''many beads and elks teeth'' were also taken from the individual's grave. It is unclear whether these associated funerary items were ever loaned or donated to the Filson Historical Society.

Determinations Made by the Filson Historical Society

Officials of the Filson Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana, and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Maureen Lane, The Filson Historical Society, 1310 S. Third Street, Louisville, KY 40206, telephone (502) 635–5083, email *Maureen@filsonhistorical.org* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana, and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed.

The Filson Historical Society is responsible for notifying the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana, and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03581 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027251; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Baylor University's Mayborn Museum Complex, (Formerly Baylor University's Strecker Museum), Waco, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Baylor University's Mayborn Museum Complex (formerly Baylor University's Strecker Museum) has completed an inventory of human remains and associated funerary objects,

in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Baylor University's Mayborn Museum Complex. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Baylor University's Mayborn Museum Complex at the address in this notice by April 1, 2019.

ADDRESSES: Anita L. Benedict, Baylor University's Mayborn Museum Complex, One Bear Place #97154, Waco, TX 76798–7154, telephone (254) 710–4835, email *anita_benedict@baylor.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Baylor University's Mayborn Museum Complex, Waco, TX. The human remains and associated funerary objects were removed from Bosque, Coryell, and Lampasas Counties, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Baylor University's Mayborn Museum Complex professional staff in consultation with representatives of the Caddo Nation of Oklahoma; Comanche Nation, Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Tonkawa Tribe of Indians of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma, (hereafter, referred to as ''The Consulted and Notified Tribes'').

History and Description of the Remains

In July 1979, human remains representing, at minimum, one individual were removed from under a limestone overhang at Cranfills Gap, Bosque County, TX, by John Harrington. On September 27, 1979 the human remains were donated to Baylor University's Strecker Museum. The human remains (AR 13342) represent one individual of undetermined age and sex. No known individual was identified. No associated funerary objects are present.

Between 1926 and 1930, human remains representing, at minimum, one individual, were removed from the Warren Hollow site, Cave Creek, Coryell County, TX, by Jessie Howard. In 1990, the Bosque Valley Heritage Museum donated the human remains and associated funerary objects to Baylor University's Strecker Museum. The human remains (AR 20847) represent a female approximately 20 years of age. No known individual was identified. The 23 associated funerary objects are one pottery sherd (AR 16012), two lots charcoal (AR 16013, AR 16020), one hand-twisted fiber (AR 16014), one partial animal (possibly opossum) skull (AR 16015), one stick with a burnt end (AR 16016), one lot unidentified animal bone fragments (AR 16017), two cane fragments (AR 16018), one plant root (AR 16019), eight animal teeth (AR 16021, AR 16025, AR 16027), two pecans (AR 16022), two rocks (AR 16023, AR 16024) and one worked animal bone (AR 16026).

On September 21, 1930, human remains representing, at minimum, two individuals were removed from the Acree Farm, Leon River, Coryell County, TX, by Kenneth H. Aynesworth. On an unknown date, prior to 1953, the human remains were donated to Baylor University's Strecker Museum. Both individuals (AR 12776, AR 3340) are of undetermined age and sex. No known individuals were identified. No associated funerary objects are present.

In the mid-1950s, human remains representing, at minimum, one individual were removed from Horse Creek, Coryell County, TX, by Frank H. Watt. On an unknown date the human remains and associated funerary object were donated to Baylor University's Strecker Museum. The human remains (AR 20813) are of an undetermined age and sex. The one associated funerary object (AR 20909) is a pottery sherd.

On January 1, 1956, human remains representing, at minimum, three individuals were removed from Stampede Creek, Coryell County, TX, by Harry Shafer. On January 1, 1956, the human remains and associated funerary objects were donated to the Baylor University's Strecker Museum. The human remains represent a 45-year-old female (AR 12761) and two males of undetermined age (AR 20913, AR 20914). No known individuals were identified. The one associated funerary object (AR 20915) is one lot of mixed materials (includes deer bone, rocks, and shell).

On November 25, 1964, human remains representing, at minimum, two individuals were removed from a dry overhang one mile north of an iron bridge on the Leon River, Coryell County, TX, by Charles L. Sells. On March 17, 1978 they were donated to Baylor University's Strecker Museum. The human remains (AR 16476, AR 20910) represent one 20–25 year-old male and one individual of undetermined age and sex. No known individuals were identified. No associated funerary objects are present.

On April 27, 1978, human remains representing, at minimum, one individual were removed by Bob Fix from ''below Indian caves, from ranch at Gatesville,'' Coryell County, TX. On April 28, 1978, the human remains were donated to the Baylor University's Strecker Museum. The individual (AR 13343–A–LL) is of undetermined age and sex. No known individual was identified. No associated funerary objects are present.

In September 1979, human remains representing, at minimum, four individuals were removed from the J.D. Cummings property, Coryell County, TX, by the property owner. On September 11, 1979, the human remains and associated funerary objects were donated to the Baylor University's Strecker Museum. The human remains represent one male aged 30–40 years (AR 16477), one male aged 50–60 years (AR 16478), and two individuals of undetermined age and sex (AR 16479, AR 20911). No known individuals were identified. The 12 associated funerary objects are two bullets (AR 16480, AR 16481); eight rocks (AR 16482 through AR 16489); one projectile point (AR 16490); and one lot of animal bone fragments (AR 20912).

On July 22, 1990, human remains representing, at minimum, one individual were removed from Shelter

#2, Davis Road, near Mother Neff State Park, Coryell County, TX, by David Lintz, Tom Charlton, Calvin B. Smith, and an individual identified as ''Davis.'' On an unknown date, the human remains were donated to the Baylor University's Strecker Museum. The individual (AR 20830) is of undetermined sex and age. No known individual was identified. No associated funerary objects are present.

On December 30, 1957, human remains representing, at minimum, one individual, were removed from an unknown location in Lampasas County, TX, by biology student Burlee Kuhn. On January 14, 1958, they were donated to Baylor University's Strecker Museum. The human remains (AR 12775) represent one individual of undetermined age and sex. No known individual was identified. No associated funerary objects are present.

In June 1953, human remains representing, at minimum, one individual were removed from a location on the Leon River, near Bland, Coryell County, TX, by James Geisselbrecht and other unnamed individuals. In June 1953, the human remains were donated to Baylor University's Strecker Museum. The human remains (AR 16482) represent a 27–30 year-old female. No known individual was identified. No associated funerary objects are present.

Determinations Made by Baylor University's Mayborn Museum Complex

Officials of Baylor University's Mayborn Museum Complex have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American, based on archeological context and museum documentation.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 18 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 37 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Comanche Nation, Oklahoma, and the Kiowa Indian Tribe of Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Comanche Nation, Oklahoma, and the Kiowa Indian Tribe of Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Anita L. Benedict, Baylor University's Mayborn Museum Complex, One Bear Place #97154, Waco, TX 76798–7154, telephone (254) 710–4835, email *anita_benedict@baylor.edu,* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Comanche Nation, Oklahoma, and the Kiowa Indian Tribe of Oklahoma may proceed.

Baylor University's Mayborn Museum Complex is responsible for notifying The Consulted and Notified Tribes that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03571 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027268; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Michigan, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Michigan has completed an inventory of human remains and associated funerary object, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of these human remains and associated funerary object should submit a written request to the University of Michigan. If no additional requesters come forward, transfer of control of the human remains and associated funerary object to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control to these human remains and associated funerary object should submit a written request with information in support of the request to the University of Michigan at the address in this notice by April 1, 2019.

ADDRESSES: Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of Research, 4080 Fleming Building, 503 South Thompson Street, Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary object under the control of the University of Michigan, Ann Arbor, MI. The human remains and associated funerary object were removed from the Shomish Gravel Pit site (20CL31) in Clinton County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Michigan Museum of Anthropological Archaeology (UMMAA) professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band;

Mille Lacs Band; White Earth Band); Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, hereafter referred to as ''The Consulted Tribes.''

Requests for consultation were also sent to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota, hereafter referred to as ''The Invited Tribes.''

History and Description of the Remains

In October 1951, human remains representing, at minimum, seven individuals were removed from the Shomish Gravel Pit site (20CL31) in Clinton County, MI. The human remains and a conch shell mask were found during gravel operations, and were donated to the UMMAA by the local sheriff on October 31, 1951. The seven individuals include one child, three-and-a-half to seven years old, with possible congenital treponema; one child, two to four years old, with possible congenital treponema; one child, six to 10 years old; one infant one to two years old, with possible congenital treponema; two older adults, both of whom had osteoarthritis; and one neonate, with a possible underlying infection. The burials have been dated to the late pre-contact era (A.D. 1400 to 1600), based on the associated funerary object. No known individuals were identified. The one associated funerary object is an inverted pear-shaped conch shell mask with two drilled holes for eyes and a possible stylized nose, and is believed to have been placed with one of the children buried at the site.

Determinations Made by the University of Michigan

Officials of the University of Michigan have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on cranial morphology, dental traits, accession documentation, and archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of seven individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary object and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary object were removed is the aboriginal land of the Saginaw Chippewa Indian Tribe of Michigan.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary object were removed is the aboriginal land of The Consulted Tribes and The Invited Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Consulted Tribes and The Invited Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of this request to Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of Research, 4080 Fleming Building, 503 South Thompson Street, Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu,* before April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to The Consulted Tribes and The Invited Tribes may proceed.

The University of Michigan is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03580 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027250; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Baylor University's Mayborn Museum Complex, (Formerly Baylor University's Strecker Museum; Formerly Baylor University Museum), Waco, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Baylor University's Mayborn Museum Complex (formerly Baylor University's Strecker Museum; formerly Baylor University Museum) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Baylor University's Mayborn Museum Complex. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Baylor University's Mayborn Museum Complex at the address in this notice by April 1, 2019.

ADDRESSES: Anita L. Benedict, Baylor University's Mayborn Museum Complex, One Bear Place #97154, Waco, TX 76798–7154, telephone (254) 710–4835, email *anita_benedict@baylor.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C.

3003, of the completion of an inventory of human remains and associated funerary objects under the control of Baylor University's Mayborn Museum Complex, Waco, TX. The human remains and associated funerary objects were removed from a dry cave 25 miles northwest of Toyah, Reeves County, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Baylor University's Mayborn Museum Complex professional staff in consultation with representatives of the Caddo Nation of Oklahoma; Comanche Nation, Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Tonkawa Tribe of Indians of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

An initiation to consult was extended to the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

Hereafter, all Tribes listed in this section are referred to as ''The Consulted and Notified Tribes.''

History and Description of the Remains

On an unknown date, possibly prior to 1895, human remains representing, at minimum, one individual were removed from a dry cave 25 miles northwest of Toyah, Reeves County, TX, by Rev. L. R. Millican. In 1904, they were donated to the Baylor University Museum. The human remains (AR 3548) represent one infant of indeterminate sex. No known individuals were identified. The one associated funerary object (AR 6215) is a basket.

Determinations Made by Baylor University's Mayborn Museum Complex

Officials of Baylor University's Mayborn Museum Complex have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American, based on the associated funerary object and museum documentation.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary object and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary object were removed is the aboriginal land of the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona, hereafter referred to as ''The Tribes.''
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary object may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Anita L. Benedict, Baylor University's Mayborn Museum Complex, One Bear Place #97154, Waco, TX 76798–7154, telephone (254) 710–4835, email *anita_benedict@baylor.edu,* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to The Tribes may proceed.

Baylor University's Mayborn Museum Complex is responsible for notifying The Tribes and The Consulted and Notified Tribes that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03575 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027265; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Thomas Burke Memorial Washington State Museum, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Burke Memorial Washington State Museum (Burke Museum), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Burke Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Burke Museum at the address in this notice by April 1, 2019.

ADDRESSES: Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Burke Museum, University of Washington, Seattle, WA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1990, 23 cultural items were removed from the Sba'badid site (45–KI–51) in King County, WA, during a cultural resource testing program by BOAS, Inc. Human remains were recovered and transferred to the Duwamish Tribe, a non-Federally recognized Indian group, in 1991. The funerary objects were retained by BOAS, Inc., and were received by the Burke Museum in 2003 (Accn. #2003–98). The 23 unassociated funerary objects are three lots of metal fragments, five lots of beads, three lots of ceramic fragments, three stone tools, one nail, one shell fragment, two non-human bone fragments, one lot of cedar wood, one piece of charcoal, one lot of buttons, one penny, and one flake.

Sba'badid was the site of a historic Duwamish village until the mid-19th century (Chatters 1981). The terms of the 1855 Point Elliott Treaty assigned the Duwamish to the Suquamish Reservation (called Fort Kitsap at the time). After 1856, due to violence between whites and Native Americans, as well as the competition over available resources, many Duwamish left the Suquamish Reservation. The Indian agent subsequently assigned the Duwamish to the Muckleshoot reservation. Descendants of the Duwamish people are members of the present-day Muckleshoot Indian Tribe and the Suquamish Indian Tribe of the Port Madison Reservation.

Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 23 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington) and the Suquamish Indian Tribe of the Port Madison Reservation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu,* by April 1, 2019. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington) and the Suquamish Indian Tribe of the Port Madison Reservation may proceed.

The Burke Museum is responsible for notifying the Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington) and the Suquamish Indian Tribe of the Port Madison Reservation that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03577 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027257; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Tennessee Valley Authority (TVA) has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** on August 22, 2017. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to TVA at the address in this notice by April 1, 2019.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the Tennessee Valley Authority, Knoxville, TN. The human remains were removed from site 1MA10 in Madison County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals in a Notice of Inventory Completion in the **Federal Register** (82 FR 39909–39911, August 22, 2017). Additional human remains from this site were discovered during improvement of the curation of the non-NAGPRA TVA archeological collection. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (82 FR 39910, August 22, 2017), column 1, paragraph 2, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

In March of 1934, human remains representing, at minimum, 47 individuals

were removed from site 1LI36, in Lawrence County, AL, by AMNH.

In the **Federal Register** (82 FR 39910, August 22, 2017), column 1, paragraph 3, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

From January 1939 to April 1940, human remains representing, at minimum, 262 individuals were removed from the Whitesburg Bridge site (1MA10) in Madison County, AL.

In the **Federal Register** (82 FR 39910, August 22, 2017), column 2, paragraph 2, sentence 2, under the heading ''Determinations Made by the Tennessee Valley Authority,'' is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 499 individuals of Native American ancestry.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The Tennessee Valley Authority is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Mississippi Band of Choctaw Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03589 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027256; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Tennessee Valley Authority (TVA) has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** on August 22, 2017. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to at the address in this notice by April 1, 2019.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the Tennessee Valley Authority, Knoxville, TN. The human remains were removed from site 1FR310 in Franklin County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (82 FR 39908–39909, August 22, 2017). Additional human remains from this site were discovered during improvement of the curation of the non-NAGPRA TVA archeological collection. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (82 FR 39908, August 22, 2017), column 2, paragraph 3, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

From 1978 to 1979, human remains representing, at minimum, 36 individuals were removed from the Ricker site (1FR310) in Franklin County, AL, by the Alabama Museum of Natural History at the University of Alabama (AMNH).

In the **Federal Register** (82 FR 39908, August 22, 2017), column 3, paragraph 2, sentence 2, under the heading ''Determinations Made by the Tennessee Valley Authority,'' is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 677 individuals of Native American ancestry.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Chickasaw Nation may proceed.

The Tennessee Valley Authority is responsible for notifying the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03576 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027264; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Burke Memorial Washington State Museum (Burke Museum) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Burke Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Burke Museum at the address in this notice by April 1, 2019.

ADDRESSES: Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 Ext 2, email *plape@uw.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Burke Museum, University of Washington, Seattle, WA. The human remains were removed from King County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington) and the Suquamish Indian Tribe of the Port Madison Reservation.

History and Description of the Remains

In 1980, human remains representing, at minimum, three individuals were removed from the Tualdad Altu site (45–KI–59) in King County, WA. The human remains were collected by the University of Washington Office of Public Archaeology as part of a contracted cultural resource inspection, and were received by the Burke Museum in 2003 (Accn. #1992–21). No known individuals were identified. No associated funerary objects are present.

The human remains have been determined to be Native American based on geographical and archeological evidence. The Tualdad Altu site falls within the traditional territory of the Duwamish Indians (Indian Claims Commission 1975). The terms of the 1855 Point Elliott Treaty assigned the Duwamish to the Suquamish Reservation (called Fort Kitsap at the time). After 1856, due to violence between whites and Native Americans, as well as the competition over available resources, many Duwamish left the Suquamish Reservation. The Indian agent subsequently assigned the Duwamish to the Muckleshoot reservation. Descendants of the Duwamish people are members of the present-day Muckleshoot Indian Tribe and the Suquamish Indian Tribe of the Port Madison Reservation.

Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington) and the Suquamish Indian Tribe of the Port Madison Reservation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 Ext 2, email *plape@uw.edu,* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington) and the Suquamish Indian Tribe of the Port Madison Reservation may proceed.

The Burke Museum is responsible for notifying the Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington) and the Suquamish Indian Tribe of the Port Madison Reservation that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03567 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027261; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Arizona State Museum, University of Arizona (ASM) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice

that wish to request transfer of control of these human remains should submit a written request to the ASM. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the ASM at the address in this notice by April 1, 2019.

ADDRESSES: John McClelland, NAGPRA Coordinator, P.O. Box 210026, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–2950.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Arizona State Museum, University of Arizona, Tucson, AZ. The human remains and associated funerary objects were removed from Pima County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the ASM professional staff in consultation with representatives of the Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Cocopah Tribe of Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In 1981, human remains representing, at minimum, one individual were removed from an unrecorded location, AZ Y:2:0, located in Yuma County, AZ, during a legally authorized survey of Arizona State Trust lands conducted by the ASM under the direction of Richard Lange. The survey was conducted in advance of a proposed agricultural lease. The designation AZ Y:2:0 was used to refer to isolated artifacts collected outside the boundaries of recorded archeological sites within the survey area. No human burials were reported at the time of the survey. Collections from this survey were received by ASM in 1981, and were assigned an accession number in 1995. In 2010, museum staff discovered these human remains in the site survey collections. No known individuals were identified. No associated funerary objects are present.

Recorded sites in the vicinity of these human remains were reported to contain a mixture of Yuman and Hohokam material culture including, but not limited to, Colorado Buff Ware ceramics. The condition of the human remains is consistent with Yuman and Hohokam mortuary practices. Archeologists describe the earliest settlements in Southern Arizona as belonging to the Late Archaic/Early Agricultural horizon. Recent archeological investigations have added support to the hypothesis that the Hohokam cultural tradition arose from this earlier horizon, based on continuities in settlement pattern, architectural technologies, irrigation technologies, subsistence patterns, and material culture. It has been difficult for archeologists to date the beginning of the Hohokam period because the appearance of its distinctive cultural traits, such as ceramic technologies and mortuary patterns, was a gradual process spanning several hundred years. This gradualism adds further support to the hypothesis that the Hohokam tradition evolved in place from earlier Late Archaic traditions. Linguistic evidence furthermore suggests that the Hohokam tradition was multiethnic in nature. Cultural continuity between these prehistoric occupants of Southern Arizona and present-day O'odham peoples is supported by continuities in settlement pattern, architectural technologies, basketry, textiles, ceramic technology, and ritual practices. Oral traditions that are documented for the Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona support cultural affiliation with Late Archaic/Early Agricultural period and Hohokam sites in southern Arizona. Oral traditions that are documented for the Hopi Tribe also support cultural affiliation with Late Archaic/Early Agricultural period and Hohokam sites in the region. Several Hopi clans and religious societies are derived from ancestors who migrated from the south, and likely identified with the Hohokam tradition. Oral traditions of medicine societies and kiva groups of the Zuni Tribe recount migration from distant portions of the Southwest to present day Zuni and supports affiliation with Hohokam and Late Archaic traditions. Historical linguistic analysis also suggests interaction between ancestral Zuni and UtoAztecan speakers during the late Hohokam period. Archeological studies suggest that Yuman groups have resided along the Lower Colorado River and the Lower Gila River in Southern Arizona for at least 1,000 years. Their presence in these areas is documented historically by Spanish explorers who, in the 1600s and 1700s, encountered people living in widely scattered rancherias around the Lower Colorado River and the Lower Gila River. Several lines of archeological evidence including similarities in material culture, settlement patterns, ceremonial sites and practices, residential architecture, and subsistence patterns suggest that the Yuman cultural traditions arose from an earlier, archeological tradition typically referred to as Patayan. Evidence of early Patayan occupation in the Lower Colorado River is poorly preserved largely due to the inundation of large areas by the Lake Mohave and Lake Havasu reservoirs, and the intensive agricultural practices of surrounding valleys. However, permanent settlements dating to around 1500 are documented in the Mohave Valley, as well as contemporaneous geoglyphs and trail networks linking ceremonial, occupational, and resource exploitation areas. In the Lower Gila River area, evidence of Patayan occupation prior to the introduction of ceramics is poorly documented due to the ephemeral nature of such early sites. However, following the introduction of ceramics around A.D. 700, settlements in the area became more permanent. Archeological evidence for these more permanent settlements include sites with pit houses and roasting or fire pits, and artifact assemblages containing similar ceramic sherds, chipped stone, and ground stone. Although there is evidence of some co-residence between

Patayan and Hohokam groups, especially in the vicinity of Gila Bend, Patayan groups share distinct cultural practices. These practices include settlement and subsistence patterns characterized by semi-permanent or permanent farming rancherias scattered across the floodplain of the Lower Gila River and the Lower Colorado River that are typically comprised of two to seven pit houses. Produce from these farms was augmented by seasonal gathering of resources from temporary camps along the river tributaries, as well as adjacent deserts and mountains. Large ceremonial sites served as gathering places for multiple families, are characterized by shrines, petroglyphs, earth figures, intaglios, dance pathways, and rock alignments located on desert terraces adjacent to the floodplains. All Patayan groups and their descendants practice cremation. Given the relative lack of archeological evidence on Patayan groups, archeologists have had difficulty establishing a relationship between prehispanic Patayan groups and specific historic Yuman tribes. However, archeologists have found the Patayan to be culturally affiliated with the Fort Mojave Tribe, Colorado River Indian Tribes, Cocopah Tribe, and Fort Yuma-Quechan Tribe. Modern Yuman groups in Southern Arizona, including the Fort Mojave Tribe, Colorado River Indian Tribes, Cocopah Tribe, and the Fort-Yuma Quechan Tribe, share oral traditions which trace their origins to the time of creation at Spirit Mountain (Avikwaame). According to this oral tradition, the Creator led the seven original Yuman groups to their various ancestral homelands, naming certain geographical markers along the way. Cultural informants cited place names from their oral traditions—settlements, geographic features, and significant locations—that correlate to geographical areas of occupation defined by archeological material culture. These oral traditions suggest cultural continuity between modern Yuman groups and the earlier archeological Patayan culture.

Determinations Made by the Arizona State Museum

Officials of the Arizona State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort Mojave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Affiliated Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human should submit a written request with information in support of the request to John McClelland, NAGPRA Coordinator, P.O. Box 210026, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–2950, by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Affiliated Tribes may proceed.

The Arizona State Museum is responsible for notifying The Consulted Tribes and The Affiliated Tribes that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03568 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027254: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Tennessee Valley Authority (TVA) has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** on September 16, 2016. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the TVA at the address in this notice by April 1, 2019.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the Tennessee Valley Authority, Knoxville, TN. The human remains were removed from site 1JA155 in Jackson County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (81 FR 63793–63795, September 16, 2016). Additional human remains and associated funerary objects from these sites were discovered during improvement of the curation of the non-NAGPRA TVA archeological collection. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (81 FR 63793, September 16, 2016), column 3, paragraph 2, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

> From January to April 1939, human remains representing, at minimum, 32 individuals were removed from the Crow Creek Island site, 1JA155, in Jackson County, AL.

In the **Federal Register** (81 FR 63794, September 16, 2016), column 3, paragraph 1, sentence 1, under the

heading ''Determinations Made by the Tennessee Valley Authority,'' is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 353 individuals of Native American ancestry.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902, telephone (865) 632–7458, email *tomaher@tva.gov,* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; and The Muscogee (Creek) Nation (hereafter referred to as ''The Tribes'') may proceed.

The Tennessee Valley Authority is responsible for notifying The Tribes that this notice has been published.

Dated: February 1, 2019

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03585 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027258; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Tennessee Valley Authority (TVA) has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** on September 5, 2017. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the TVA at the address in this notice by April 1, 2019.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the Tennessee Valley Authority, Knoxville, TN. The human remains were removed from sites 1JA27, 1JA28 and 1MS121 in Jackson and Marshall County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (82 FR 41990–41991, September 5, 2017). Additional human remains from these sites were discovered during improvement of the curation of the non-NAGPRA TVA archeological collection. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (82 FR 41990, September 5, 2017), column 3, paragraph 3, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

From March to April of 1938, human remains representing, at minimum, 49 individuals were removed from the Hardin site (1JA27) in Jackson County, AL, after TVA acquired the site on October 16, 1936.

In the **Federal Register** (82 FR 41990, September 5, 2017), column 3, paragraph 4, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

From January to June of 1938, human remains representing, at minimum, 162 individuals were removed from the Saulty and Riley site (1JA28) in Jackson County, AL, after TVA purchased the site on October 16, 1936.

In the **Federal Register** (82 FR 41991, September 5, 2017), column 1, paragraph 2, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

From October to November of 1937, human remains representing, at minimum, 14 individuals were removed from site 1MS121 on Pine Island in Marshall County, AL, after TVA purchased the site on April 19, 1937.

In the **Federal Register** (82 FR 41991, September 5, 2017), column 2, paragraph 1, sentence 2, under the heading ''Determinations Made by the Tennessee Valley Authority,'' is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 309 individuals of Native American ancestry.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902, telephone (865) 632–7458, email *tomaher@tva.gov,* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; and The Muscogee (Creek) Nation may proceed.

The Tennessee Valley Authority is responsible for notifying the Absentee Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Mississippi Band of Choctaw Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03586 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027249; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Baylor University's Mayborn Museum Complex, (Formerly Baylor University's Strecker Museum; Formerly Baylor University Museum), Waco, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Baylor University's Mayborn Museum Complex (formerly Baylor University's Strecker Museum; formerly Baylor University Museum) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Baylor University's Mayborn Museum Complex. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Baylor University's Mayborn Museum Complex at the address in this notice by April 1, 2019.

ADDRESSES: Anita L. Benedict, Baylor University's Mayborn Museum Complex, One Bear Place #97154, Waco, TX 76798–7154, telephone (254) 710–4835, email *anita_benedict@baylor.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control Baylor University's Mayborn Museum Complex, Waco, TX. The human remains were removed from Randall and Scurry Counties, TX, and an unknown location in Northwest TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Baylor University's Mayborn Museum Complex professional staff in consultation with representatives of the Caddo Nation of Oklahoma; Comanche Nation, Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Tonkawa Tribe of Indians of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

An invitation to consult was extended to the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

Hereafter, all Tribes listed in this section are referred to as ''The Consulted and Notified Tribes.''

History and Description of the Remains

Prior to 1905, human remains representing, at minimum, one individual were removed from Palo Duro Canyon in Randall County, TX, by George W. Carroll. The human remains were donated to the Baylor University Museum on an unknown date. The human remains (AR 4015) represent an individual of undetermined sex and age. No known individuals were identified. No associated funerary objects are present.

On March 14, 1970, human remains representing, at minimum, two individuals were removed from the south side of Lake J.B. Thomas, north of Lake Thomas Yacht Club in the southwest part of Scurry County, TX, by the Scurry County South Plains Archaeological Association. On May 29, 1972, the Scurry County South Plains Archeological Association donated the human remains to the Scurry County Museum in Snyder, TX. On October 6, 1997, the Scurry County Museum transferred the human remains to Baylor University's Strecker Museum. The human remains represent one adult male (AR 20810) and one adult female (AR 20922). No known individuals were identified. No associated funerary objects are present.

Prior to 1906, human remains representing, at minimum, one individual were removed from Northwest TX, by R.B. Burleson. On an unknown date, the human remains were donated to the Baylor University Museum. The human remains (AR 4013) represent an individual of undetermined sex and age. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Baylor University's Mayborn Museum Complex

Officials of Baylor University's Mayborn Museum Complex have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American, based on the archeological context and museum documentation.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona, hereafter referred to as ''The Tribes.''
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Comanche Nation,

Oklahoma and the Kiowa Indian Tribe of Oklahoma.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Anita L. Benedict, Baylor University's Mayborn Museum Complex, One Bear Place #97154, Waco, TX 76798–7154, telephone (254) 710–4835, email *anita_benedict@baylor.edu,* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Baylor University's Mayborn Museum Complex is responsible for notifying The Tribes and The Consulted and Notified Tribes that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03588 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027269; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: San Diego Museum of Man, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Diego Museum of Man has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the San Diego Museum of Man. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the San Diego Museum of Man at the address in this notice by April 1, 2019.

ADDRESSES: Ben Garcia, Deputy Director, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239–2001 Ext. 17, email *bgarcia@museumofman.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the San Diego Museum of Man, San Diego, CA. The human remains were removed from San Nicolas Island, Ventura County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the San Diego Museum of Man professional staff in consultation with representatives of the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1937, human remains representing, at minimum, one individual were donated to the San Diego Museum of Man by Mrs. L. H. Sherman. These human remains had been removed from San Nicolas Island (SNI), Ventura County, CA. No primary documentation or specific provenience information beyond their SNI origin exists for these human remains. No known individual was identified.

An examination of the human remains by San Diego Museum of Man physical anthropology professional staff determined the individual to be of Native American origin. Archeological data indicate that The Tribes can trace their ancestry back to the people who previously occupied on the Channel Islands.

Determinations Made by the San Diego Museum of Man

Officials of the San Diego Museum of Man have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Ben Garcia, Deputy Director, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239–2001 Ext. 17, email *bgarcia@museumofman.org,* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The San Diego Museum of Man is responsible for notifying The Tribes that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03582 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027255; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Tennessee Valley Authority (TVA) has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** on August 22, 2017. This notice corrects the minimum number of individuals. Lineal

descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribe stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the TVA at the address in this notice by April 1, 2019.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the Tennessee Valley Authority, Knoxville, TN. The human remains were removed from sites 1CT27, and 1LU59 in Colbert and Lauderdale counties, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (82 FR 39904–39906, August 22, 2017). Additional human remains from these sites were discovered during improvement of the curation of the non-NAGPRA TVA archeological collection. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (82 FR 39904, August 22, 2017), column 3, paragraph 1, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

From August 5, 1936 to August 13, 1937, human remains representing, at minimum, 310 individuals were removed from the Mulberry Creek site (1CT27) in Colbert County, AL, by the Alabama Museum of Natural History at the University of Alabama (AMNH).

In the **Federal Register** (82 FR 39904, August 22, 2017), column 3, paragraph 2, sentence 1, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

From September 22, 1936 to September 30, 1937, human remains representing, at minimum 482 individuals were removed from the Bluff Creek site (1LU59) in Lauderdale County, AL, by AMNH.

In the **Federal Register** (82 FR 39906, August 22, 2017), column 1, paragraph 1, sentence 1, under the heading ''Determinations Made by the Tennessee Valley Authority,'' is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 979 individuals of Native American ancestry.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by April 1, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Chickasaw Nation may proceed.

The Tennessee Valley Authority is responsible for notifying the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: February 1, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–03572 Filed 2–28–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0002; DS63644000 DR2000000.CH7000 190D1113RT]

States' Decisions on Participating in Accounting and Auditing Relief for Federal Oil and Gas Marginal Properties

AGENCY: Office of the Secretary, Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: Office of Natural Resources Revenue (ONRR) regulations provide two types of accounting and auditing relief for Federal onshore or Outer Continental Shelf lease production from marginal properties. Each year ONRR provides a list of qualifying marginal Federal oil and gas properties to States that receive a portion of Federal royalties from those properties. Each State then decides whether to participate in one or both relief options. For calendar year 2019, we provide this notice of the affected States' decisions to allow one or both types of relief.

DATES: January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sudar, Market and Spatial Analytics, CEVA, ONRR, at (303) 231–3511; or email to *robert.sudar@onrr.gov.*

SUPPLEMENTARY INFORMATION: The regulations, codified at 30 CFR part 1204, subpart C, implement certain provisions of section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (30 U.S.C. 1726), which allows States to relieve the lessees of marginal properties from certain reporting, accounting, and auditing requirements. States make an annual determination of whether or not to allow relief. Two options for relief are authorized: (1) Notification-based relief from cumulative royalty reports and payments, allowing lessees or designees instead to file one annual report and make one annual payment, and (2) other requested relief, as proposed by lessees or designees and approved by ONRR, after consulting with the affected State(s). The regulations require ONRR to publish no later than 30 days before the beginning of the calendar year a list of the States and their decisions regarding marginal property relief.

To qualify for the first relief option (notification-based relief) for calendar year 2019, properties must produce less than 1,000 barrels-of-oil-equivalent (BOE) per year for the base period (July 1, 2017 through June 30, 2018). Annual reporting relief will begin January 1, 2019, with the annual report and

payment due February 28, 2020, or March 31, 2020 if you have an estimated payment on file. To qualify for the second relief option (other requested relief), the combined equivalent production of the marginal properties during the base period must equal an average daily well production of less than 15 BOE per well, per day calculated under 30 CFR 1204.4(c).

The following table shows the States that have qualifying marginal properties and the States' decisions to allow one or both forms of relief during calendar year 2019.

State	Notification-based relief (less than 1,000 BOE per year)	Request-based relief (less than 15 BOE per well per day)
Alabama	No	No.
Arkansas	N/A	No.
California	No	No.
Colorado	No	No.
Kansas	No	No.
Louisiana	No	No.
Michigan	Yes	Yes.
Mississippi	No	No.
Montana	No	No.
Nebraska	No	No.
Nevada	Yes	Yes.
New Mexico	No	Yes.
North Dakota	Yes	Yes.
Oklahoma	No	No.
South Dakota	No	No.
Utah	No	No.
Wyoming	Yes	No.

Federal oil and gas properties located in all other States where ONRR does not share a portion of Federal royalties with the State are eligible for relief if they qualify as marginal under 30 U.S.C. 1726(c). For information on how to obtain relief, please refer to 30 CFR 1204.205, which you may view at *https://www.ecfr.gov/.*

Unless the information that ONRR received is proprietary data, all correspondence, records, or information that we receive in response to this notice may be subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552 *et seq.*). If applicable, please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data. We protect the proprietary information under the Trade Secrets Act (18 U.S.C. 1905), FOIA Exemption 4 (5 U.S.C. 552(b)(4)), and the Department of the Interior's FOIA regulations (43 CFR part 2).

James D. Steward,

Acting Director, for the Office of Natural Resources Revenue.

[FR Doc. 2019–03696 Filed 2–28–19; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1140–1142 (Second Review)]

Uncovered Innerspring Units From China, South Africa, and Vietnam; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on uncovered innerspring units from China, South Africa, and Vietnam would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted March 1, 2019. To be assured of consideration, the deadline for responses is April 1, 2019. Comments on the adequacy of responses may be filed with the Commission by May 14, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 11, 2008, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of uncovered innerspring units from South Africa and Vietnam (73 FR 75390 and 75391). On February 19, 2009, the Department of Commerce issued an antidumping duty order on imports of uncovered innerspring units from China (74 FR 7661). Following the five-year reviews by Commerce and the Commission, effective April 23, 2014, Commerce issued a continuation of the antidumping duty orders on imports of uncoverd innerspring units from China, South Africa, and Vietnam (79 FR 22624). The Commission is now conducting second reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China, South Africa, and Vietnam.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its expedited first five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of uncovered innerspring units, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its expedited first five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of uncovered innerspring units.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 1, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is May 14, 2019. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–425, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose

members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2012.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in number of units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in number of units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in number of units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2012, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree

with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 22, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–03452 Filed 2–28–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Siegfried USA, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 30, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on November 5, 2018, Siegfried USA, LLC, 33 Industrial Park Road, Pennsville, New Jersey 08070–3244 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Dihydromorphine	9145	I
Hydromorphinol	9301	I
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Codeine	9050	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium tincture	9630	II
Oxymorphone	9652	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Dated: February 11, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–03689 Filed 2–28–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Meridian Medical Technologies

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 1, 2019. Such persons may also file a written request for a hearing on the application on or before April 1, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant

Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on November 19, 2018, Meridian Medical Technologies, 2555 Hermelin Drive, Saint Louis, Missouri 63144 applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Morphine ...	9300	II

The company manufactures a product containing morphine in the United States. The company exports this product to customers around the world. The company has been asked to ensure that its product, which is sold to European customers, meets the standards established by the European Pharmacopeia, administered by the Directorate for the quality of Medicines (EDQM). In order to ensure that is product will meet European specifications, the company seeks to import morphine supplied by EDQM for use as reference standards.

Dated: February 13, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–03688 Filed 2–28–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0069]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Flash/Cancellation/Transfer Notice (I–12)

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 60-day notice.

SUMMARY: Department of Justice (DOJ), Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 30, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (telephone: 304–625–5093) or email *glbrovey@fbi.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted via email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Flash/Cancellation/Transfer Notice.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: I–12. Sponsoring component: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies. This collection is needed to indicate on an individual's criminal history that the individual is being supervised to ensure the supervisory agency is notified of any additional criminal history activity. Acceptable data is stored as part of the Next Generation Identification (NGI) system of the FBI.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,171 respondents will complete each form within approximately 8 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 25,905 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 21, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–03301 Filed 2–28–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1578]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention has scheduled a meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

DATES: Friday March 22nd, 2019 at 9:00 a.m.–4:30 p.m. EST.

ADDRESSES: The meeting will take place in the third floor video conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St. NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Visit the website for the FACJJ at *www.facjj.ojp.gov* or contact Jeff

Slowikowski, Designated Federal Official (DFO), OJJDP, by telephone at (202) 616–3646, email at *jeff.slowikowski@usdoj.gov,* or fax at (202) 353–9093; or Maegen Currie, Senior Program Manager/Federal Contractor, by telephone (732) 948–8862, email at *maegen.currie@bixal.com,* or fax at (866) 854–6619. Please note that the above phone/fax numbers are not toll free.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of representatives from the states and territories. FACJJ member duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information on the FACJJ may be found at *www.facjj.ojp.gov.* FACJJ meeting agendas are available on *www.facjj.ojp.gov.* Agendas will generally include: (a) Opening remarks and introductions; (b) Presentations and discussion; and (c) member announcements.

For security purposes and because space is limited, members of the public who wish to attend must register in advance of the meeting online at FACJJ Registration Site, no later than Friday March 15th, 2019. Should issues arise with online registration, or to register by fax or email, the public should contact Maegen Currie, Senior Program Manager/Federal Contractor (see above for contact information). If submitting registrations via fax or email, attendees should include all of the following: Name, Title, Organization/Affiliation, Full Address, Phone Number, Fax and Email. The meeting will also be available to join online via Webex, a video conferencing platform. Registration for this is also found online at FACJJ Registration Site.

Note: Photo identification will be required to attend the meeting at the OJP 810 7th Street Building.

Interested parties may submit written comments and questions in advance to Jeff Slowikowski (DFO) for the FACJJ, at the contact information above. If faxing, please follow up with Maegen Currie, Senior Program Manager/Federal Contractor (see above for contact information) in order to assure receipt of submissions. All comments and questions should be submitted no later than 5:00 p.m. EST on Friday March 15th, 2019.

The FACJJ will limit public statements if they are found to be duplicative. Written questions submitted by the public while in attendance will also be considered by the FACJJ.

Jeff Slowikowski,

Senior Advisor, Office of Juvenile Justice and Delinquency Prevention, Designated Federal Official, Federal Advisory Committee on Juvenile Justice.

[FR Doc. 2019–03667 Filed 2–28–19; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1757]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention announces its next meeting.

DATES: Thursday March 14th, 2019 at 10:00 a.m. EST.

ADDRESSES: The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St. NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Visit the website for the Coordinating Council at *www.juvenilecouncil.gov* or contact Jeff Slowikowski, Designated Federal Official (DFO), OJJDP, by telephone at (202) 616–3646, email at *jeff.slowikowski@usdoj.gov,* or fax at (202) 353–9093; or Maegen Currie, Senior Program Manager/Federal Contractor, by telephone (732) 948–8862, email at *maegen.currie@bixal.com,* or fax at (866) 854–6619. Please note that the above phone/fax numbers are not toll free.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention (''Council''), established by statute in the Juvenile and Delinquency Prevention Act of 1974 section 206(a) (42 U.S.C. 5616(a)), will meet to carry out its advisory functions. Information regarding this meeting will be available on the Council's web page at *www.juvenilecouncil.gov.* The meeting is open to the public, and available via online video conference, but prior registration is required (see below). In addition, meeting documents will be viewable via this website including meeting announcements, agendas, minutes and reports.

Although designated agency representatives may attend in lieu of members, the Council's formal membership consists of the following secretaries and/or agency officials; Attorney General (Chair), Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), Secretary of Health and Human Services (HHS), Secretary of Labor (DOL), Secretary of Education (DOE), Secretary of Housing and Urban Development (HUD), Director of the Office of National Drug Control Policy, Chief Executive Officer of the Corporation for National and Community Service and the Assistant Secretary of Homeland Security for the U.S. Immigration and Customs Enforcement. Nine additional members are appointed by the Speaker of the U.S. House of Representatives, the U.S. Senate Majority Leader and the President of the United States. Further agencies that take part in Council activities include, the Departments of Agriculture, Defense, Interior and the Substance and Mental Health Services Administration of HHS.

Council meeting agendas are available on *www.juvenilecouncil.gov.* Agendas will generally include: (a) Opening remarks and introductions; (b) Presentations and discussion of agency work; and (c) Council member announcements.

For security purposes and because space is limited, members of the public who wish to attend must register in advance of the meeting online at *www.juvenilecouncil.gov,* no later than Friday March 8th, 2019. Should issues arise with online registration, or to register by fax or email, the public should contact Maegen Currie, Senior Program Manager/Federal Contractor (see above for contact information). If submitting registrations via fax or email, attendees should include all of the following: Name, Title, Organization/Affiliation, Full Address, Phone Number, Fax and Email. The meeting will also be available to join online via Webex, a video conferencing platform. Registration for this is also found online at *www.juvenilecouncil.gov.*

Note: Photo identification will be required to attend the meeting at the OJP 810 7th Street Building.

Interested parties may submit written comments and questions in advance to Jeff Slowikowski (DFO) for the Council, at the contact information above. If faxing, please follow up with Sarah Wisniewski, Senior Program Manager/ Federal Contractor (contact information above) in order to assure receipt of submissions. All comments and questions should be submitted no later than 5:00 p.m. EST on Friday March 8th, 2019. The Council will limit public statements if they are found to be duplicative. Written questions submitted by the public while in attendance will also be considered by the Council.

Jeff Slowikowski,

Senior Advisor, Office of Juvenile Justice and Delinquency Prevention, Designated Federal Official, Coordinating Council for Juvenile Justice and Delinquency Prevention.

[FR Doc. 2019–03637 Filed 2–28–19; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Price Index Housing Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Consumer Price Index Housing Survey,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 1, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201806-1220-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-BLS, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Consumer Price Index (CPI) Housing Survey information collection. The CPI is a measure of the average change over time in the prices paid by consumers for a market basket of consumer goods and services. Each month, BLS data collectors visit or call thousands of retail stores, service establishments, rental units, and doctors' offices all over the United States to obtain information on the prices of the thousands of items used to track and measure price changes in the CPI. The collection of price data from rental units is essential for the timely and accurate calculation of the shelter component of the CPI. The CPI is then widely used as a measure of inflation, indicator of the effectiveness of government economic policy, deflator for other economic series and as a means of adjusting dollar values. The BLS Organic Act authorizes this information collection. *See* 29 U.S.C. 1, 2.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0163.

The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 2, 2018 (83 FR 30980).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0163. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Consumer Price Index Housing Survey.

OMB Control Number: 1220–0163.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 75,769.

Total Estimated Number of Responses: 129,778.

Total Estimated Annual Time Burden: 12,752 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2019–03617 Filed 2–28–19; 8:45 am]

BILLING CODE 4610–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; International Price Program U.S. Import and Export Price Indexes

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''International Price Program U.S. Import and Export Price Indexes,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 1, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201806-1220-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the International Price Program U.S. Import and Export Price Indexes information collection. Price data collected by the International Price Program are used to produce indexes that measure, on a monthly basis, changes in transaction prices of goods and services exported from or imported into the U.S. Published data, in turn, are used to deflate import and export trade statistics, deflate the foreign trade component of the Gross Domestic Product, determine monetary and fiscal policy, negotiate trade agreements, and determine trade and commercial policy. Respondents are establishments conducting import/export trade. They receive no compensation for their voluntary participation. Bureau of Labor Statistics Authorizing Statute sections 1 and 2 authorize this information collection. *See* 29 U.S.C. 1, 2.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0025.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 19, 2018 (83 FR 38450).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0025. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: International Price Program U.S. Import and Export Price Indexes.

OMB Control Number: 1220–0025.

Affected Public: Private Sector—business or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 6,950.

Total Estimated Number of Responses: 43,075.

Total Estimated Annual Time Burden: 20,674 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2019–03616 Filed 2–28–19; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension 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 (PRA95). 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 is soliciting comments concerning the proposed collection: Pharmacy Billing Requirements. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 30, 2019.

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; by fax (202) 354–9647; or 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) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP pay for covered medical treatment provided to beneficiaries; this medical treatment can include medicinal drugs dispensed by pharmacies. In order to determine whether amounts billed for drugs are appropriate, OWCP must receive the required data elements, including the name of the patient/beneficiary, the National Drug Code (NDC) number of the drugs prescribed, the quantity provided, the prescription number and the date the prescription was filled. The regulations implementing these statutes require the collection of information needed to enable OWCP to determine if bills for drugs submitted directly by pharmacies, or reimbursement requests submitted by claimants, should be paid. There is no standardized paper form for submission of the billing information collected in this Information Collection Request (ICR). Over the past several years, almost all pharmacy bills submitted to OWCP have been submitted electronically using one of the industry-wide standard formats for the electronic transmission of billing data through nationwide data clearinghouses devised by the National Council for Prescription Drug Programs (NCPDP). None of the electronic billing formats have been designed by or provided by OWCP; they are billing formats commonly accepted by other Federal programs and in the private health insurance industry for drugs. Nonetheless, the three programs (FECA, BLBA and EEOICPA) provide instructions for the submission of necessary pharmacy bill data elements in provider manuals distributed or made available to all pharmacies enrolled in the programs. This information collection is currently approved for use through May 31, 2019.

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 is seeking public comments on the extension of this currently approved information collection.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Pharmacy Billing Requirements.

OMB Number: 1240–0050.

Affected Public: Business or other for-profit.

Total Respondents: 4,146.

Total Responses: 1,381,903.

Time per Response: 1–5 Minutes.

Frequency: On Occasion.

Estimated Total Burden Hours: 24,203.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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: February 22, 2019.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2019–03618 Filed 2–28–19; 8:45 am]

BILLING CODE 4510–CR–P

OFFICE OF MANAGEMENT AND BUDGET

Notice; 2018 Statutory Pay-As-You-Go Act Annual Report

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice.

SUMMARY: This report is being published as required by the Statutory Pay-As-You-Go (PAYGO) Act of 2010. The Act requires that OMB issue an annual report and a sequestration order, if necessary.

FOR FURTHER INFORMATION CONTACT: Erin O'Brien. 202–395–3106.

SUPPLEMENTARY INFORMATION: This report can be found at *https://www.whitehouse.gov/omb/paygo/.*

Authority: 2 U.S.C. 934.

Kelly Kinneen,

Assistant Director for Budget.

This Report is being published pursuant to section 5 of the Statutory Pay-As-You-Go (PAYGO) Act of 2010, Public Law 111–139, 124 Stat. 8, 2 U.S.C. 934, which requires that OMB issue an annual PAYGO report, including a sequestration order if necessary, no later than 14 working days after the end of a congressional session.[1]

This Report describes the budgetary effects of all PAYGO legislation enacted during the second session of the 115th Congress and presents the 5-year and 10-year PAYGO scorecards maintained by OMB. Because neither the 5-year nor 10-year scorecard shows a debit for the budget year, which for purposes of this Report is fiscal year 2019,[2] a sequestration order under subsection

[1] This Report is being issued after the statutory date due to the lapse in appropriations that occurred on December 22, 2018, which was resolved on January 25, 2019.

[2] References to years on the PAYGO scorecards are to fiscal years.

5(b) of the PAYGO Act, 2 U.S.C. 934(b) is not necessary.

The budget year balance on each of the PAYGO scorecards is zero because two laws, the Bipartisan Budget Act of 2018 (Pub. L. 115–123), and the Further Additional Continuing Appropriations Act, 2019 (Pub. L. 116–5), directed changes to the balances of the scorecards. Public Law 115–123 removed all balances included on the scorecards at the time of enactment, and Public Law 116–5 shifted the debits on both scorecards from fiscal year 2019 to fiscal year 2020. The changes directed by these laws are discussed in more detail in section IV of this report.

During the second session of the 115th Congress, one law was enacted with emergency requirements under section 4(g) of the PAYGO Act, 2 U.S.C. 933(g) that had PAYGO effects. Six laws had estimated budgetary effects on direct spending and revenues that were excluded from the calculations of the PAYGO scorecards due to provisions excluding all or part of the law from section 4(d) of the PAYGO Act, 2 U.S.C. 933(d).

I. PAYGO Legislation With Budgetary Effects

PAYGO legislation is authorizing legislation that affects direct spending or revenues, and appropriations legislation that affects direct spending in the years after the budget year or affects revenues in any year.[3] For a more complete description of the Statutory PAYGO Act, see Chapter 8, ''Budget Concepts,'' of the *Analytical Perspectives* volume of the 2019 President's Budget, found on the website of the U.S. Government Printing Office (*https://www.govinfo.gov/content/pkg/BUDGET-2019-PER/pdf/BUDGET-2019-PER.pdf*).

The 5-year and 10-year PAYGO scorecards for each congressional session begin with the balances of costs or savings carried over from previous sessions and then tally the costs or savings of PAYGO laws enacted in the most recent session. The 5-year PAYGO scorecard for the second session of the 115th Congress began with balances of savings of $2,515 million in 2019 and $1,889 million in 2020 and with costs of $1,567 million in 2021 and $1,089 million in 2022. Section 30102 of Public Law 115–123 eliminated those balances, resetting each year of the scorecards to zero. The completed 5-year scorecard for the session shows that PAYGO legislation enacted during the session was estimated to have PAYGO budgetary effects that increased the deficit by an average of $1,646 million each year from 2019 through 2023.[4] Section 104 of Public Law 116–5 deducted the costs from the scorecard in 2019 and added those costs to the scorecard in 2020. Therefore, the 2019 column of the scorecard is zero and the 2020 column reflects a debit of $3,293 million.

The 10-year PAYGO scorecard for the second session of the 115th Congress began with balances of savings of $13,815 million in 2019 and 2020, $7,444 million in 2021, $6,734 million in 2022, $5,599 million in 2023, $5,606 million in 2024, and $4,085 million in 2025, and with costs of $1,633 million in 2026 and $653 million in 2027. Section 30102 of Public Law 115–123 eliminated those balances. The completed 10-year scorecard for the session shows that PAYGO legislation for the session increased the deficit by an average of $1,032 million each year from 2019 through 2028. Section 104 of Public Law 116–5 deducted the costs from the scorecard in 2019 and added those costs to the scorecard in 2020. Therefore, the 2019 column of the scorecard is zero and the 2020 column reflects a debit of $2,064 million.

In the second session of the 115th Congress, 64 laws were enacted that were determined to constitute PAYGO legislation. Of the 64 enacted PAYGO laws, 14 laws were estimated to have PAYGO budgetary effects (costs or savings) in excess of $500,000 over one or both of the 5-year or 10-year PAYGO windows. These were:

- Bipartisan Budget Act of 2018, Public Law 115–123;
- Consolidated Appropriations Act, 2018, Public Law 115–141;
- Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174;
- Northern Mariana Islands U.S. Workforce Act of 2018, Public Law 115–218;
- Miscellaneous Tariff Bill Act of 2018, Public Law 115–239;
- Tribal Social Security Fairness Act of 2018, Public Law 115–243;
- Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019, Public Law 115–244;
- Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Public Law 115–245;
- Department of Veterans Affairs Expiring Authorities Act of 2018, Public Law 115–251;
- FAA Reauthorization Act of 2018, Public Law 115–254;
- Orrin G. Hatch-Bob Goodlatte Music Modernization Act, Public Law 115–264;
- America's Water Infrastructure Act of 2018, Public Law 115–270;
- Agriculture Improvement Act of 2018, Public Law 115–334; and
- To amend the Federal Election Campaign Act of 1971 to extend through 2023 the authority of the Federal Election Commission to impose civil money penalties on the basis of a schedule of penalties established and published by the Commission, Public Law 115–386.

In addition to the laws identified above, 50 laws enacted in this session were estimated to have negligible budgetary effects on the PAYGO scorecards—costs or savings of less than $500,000 over both the 5-year and 10-year PAYGO windows.

II. Budgetary Effects Excluded From the Scorecard Balances

A. Legislation Designated as Emergency Requirements

As shown on the scorecards, one law was enacted in the second session of the 115th Congress with an emergency designation under the Statutory PAYGO Act:

- Bipartisan Budget Act of 2018, Public Law 115–123.

The effects of the provisions in this law that are designated as emergency requirements are also excluded from the PAYGO scorecards as described below, so do not appear on the scorecards.

B. Statutory Provisions Excluding Legislation From the Scorecards

Six laws enacted in the second session of the 115th Congress had estimated budgetary effects on direct spending and revenues that were excluded from the calculations for the

[3] Provisions in appropriations acts that affect direct spending in the years after the budget year (also known as ''outyears'') or affect revenues in any year are considered to be budgetary effects for the purposes of the PAYGO scorecards except if the provisions produce outlay changes that net to zero over the current year, budget year, and the four subsequent years. As specified in section 3 of the PAYGO Act, off-budget effects are not counted as budgetary effects. Off-budget effects refer to effects on the Social Security trust funds (Old-Age and Survivors Insurance and Disability Insurance) and the Postal Service.

[4] As provided in section 4(d) of the PAYGO Act, 2 U.S.C. 933(d), budgetary effects on the PAYGO scorecards are based on congressional estimates for bills including a reference to a congressional estimate in the Congressional Record, and for which such a reference is indeed present in the Record. Absent such a congressional cost estimate, OMB is required to use its own estimate for the scorecard. None of the bills enacted during this session had such a congressional estimate and therefore OMB was required to provide an estimate for all PAYGO laws enacted during the session.

PAYGO scorecards due to provisions in law excluding all or part of the law from section 4(d) of the Statutory Pay-As-You-Go Act of 2010. Two laws were excluded entirely from the scorecards:

• VA Maintaining Internal Systems and Strenghtening Integrated Outside Networks Act of 2018 (Pub. L. 115–182, also called the VA MISSION Act); and

• Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (Pub. L. 115–271).

In addition, budgetary effects in four laws were excluded by provisions excluding certain portions of those laws from the scorecards:

• Making further continuing appropriations for the fiscal year ending September 30, 2018, and for other purposes, Public Law 115–120;

• Bipartisan Budget Act of 2018, Public Law 115–123, including emergency funding discussed above;

• Consolidated Appropriations Act, 2018, Public Law 115–141; and

• FAA Reauthorization Act of 2018, Public Law 115–254.[5]

III. PAYGO Scorecards

STATUTORY PAY–AS–YOU–GO SCORECARDS

[In millions of dollars; negative amounts portray decreases in deficits]

	2019	2020	2021	2022	2023
Second Session of the 115th Congress	1,646	1,646	1,646	1,646	1,646
Balances from Previous Sessions	−2,515	−1,889	1,567	1,089	0
Elimination of balances pursuant to Sec. 30102 of Public Law 115–123	2,515	1,889	−1,567	−1,089	0
Change in debit pursuant to Sec. 104 of Public Law 116–5	*−1,646*	*1,646*	*0*	*0*	*0*
5-year PAYGO Scorecard	0	3,293	1,646	1,646	1,646

	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Second Session of the 115th Congress	1,032	1,032	1,032	1,032	1,032	1,032	1,032	1,032	1,032	1,032
Balances from Previous Sessions	−13,815	−13,815	−7,444	−6,734	−5,999	−5,606	−4,085	1,633	653	0
Elimination of balances pursuant to Sec. 30102 of Public Law 115–123	13,815	13,815	7,444	6,734	5,999	5,606	4,085	−1,633	−653	0
Change in debit pursuant to Sec. 104 of Public Law 116–5	*−1,032*	*1,032*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
10-year PAYGO Scorecard	0	2,064	1,032	1,032	1,032	1,032	1,032	1,032	1,032	1,032

IV. Legislative Revisions to the PAYGO Scorecards

Two laws were enacted prior to issuance of this report that required direct adjustments to the totals on the PAYGO scorecards.

A. Elimination of Balances

Public Law 115–123, the Bipartisan Budget Act of 2018 (BBA), includes a provision that states, ''Effective on the date of enactment of this Act, the balances on the PAYGO scorecards established pursuant to paragraphs (4) and (5) of section 4(d) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(d)) shall be zero.'' Accordingly, these scorecards show the removal of the balances on the scorecards from laws enacted prior to the BBA. The PAYGO effects of the BBA are included in the subsequent balances.

B. Deduction of Budget Year Debit From the 5- and 10-Year Scorecards

Public Law 116–5, Further Additional Continuing Appropriations Act, 2019, includes a provision that states, ''For the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after adjournment of the second session of the 115th Congress, and for determining whether a sequestration order is necessary under such section, the debit for the budget year on the 5-year scorecard, if any, and the 10-year scorecard, if any, shall be deducted from such scorecard in 2019 and added to such scorecard in 2020.'' Accordingly, both the 5- and 10-year scorecards deduct the debit from 2019 and add that debit to 2020.

V. Sequestration Order

As shown on the scorecards, the budgetary effects of PAYGO legislation enacted in the second session of the 115th Congress, combined with section 104 of Public Law 116–5, resulted in zero costs on both the 5-year and the 10-year scorecard in the budget year, which is 2019 for the purposes of this Report. Because the costs for the budget year, as shown on the scorecards, do not exceed savings for the budget year, there is no ''debit'' on either scorecard under section 3 of the PAYGO Act, 2 U.S.C. 932, and there is no need for a sequestration order.[6]

The totals shown in 2020 through 2028 will remain on the scorecards that are used to record the budgetary effects of PAYGO legislation enacted in the first session of the 116th Congress, and will be used in determining whether a sequestration order will be necessary in the future. On the 5-year scorecard for the first session of the 116th Congress, 2020 through 2023 will show balances of costs. On the 10-year scorecard, 2020 through 2028 will show balances of costs.

[FR Doc. 2019–03708 Filed 2–28–19; 8:45 am]

BILLING CODE 3110–01–P

[5] While the FAA Reauthorization Act of 2018 held certain amounts off of the PAYGO scorecards, the amounts in division I were instead counted as adjustments for emergency spending under the discretionary caps established under section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 for purposes of budget enforcement.

[6] Joint Committee reductions for 2019 were calculated and ordered in a separate report and are not affected by this determination. See: *https://www.whitehouse.gov/wp-content/uploads/2018/02/Sequestration_Report_February_2018.pdf.*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–005)]

NASA Advisory Council Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Aeronautics

Committee of the NASA Advisory Council (NAC). This meeting will be held for soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

DATES: Wednesday, March 20, 2019, 10:00 a.m.–4:10 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 6E40, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Irma Rodriguez, Designated Federal Officer, Aeronautics Research Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0984, or *irma.c.rodriguez@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch-tone telephone to participate in this meeting. Any interested person may dial the USA toll-free conference number 1–888–769–8716, participant passcode: 6813159, followed by the # sign to participate in this meeting by telephone. The WebEx link is *https://nasaenterprise.webex.com/,* the meeting number is 902 008 463, and the password is 7eJHTGd@. The agenda for the meeting includes the following topics:

—FY 2020 Aeronautics Research Mission Directorate (ARMD) Budget
—Airspace Research Vision Beyond NextGen
—Progress on University Leadership Initiative

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid government-issued identification (*i.e.,* driver's license, passport, etc.) to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 15 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 5 working days in advance. Information should be sent to Ms. Irma Rodriguez by fax at (202) 358–4060. For questions, please call Ms. Irma Rodriguez at (202) 358–0984. Attendees will also be required to sign a register prior to entering the meeting room. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019–03639 Filed 2–28–19; 8:45 am]

BILLING CODE 7510–13–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; Containment Pressure Analysis

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 departure from elements of the certification information of Tier 1 of the generic AP1000 design control document (DCD) and issuing License Amendment Nos. 147 and 146 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, 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 (collectively SNC); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia. The amendment changes the VEGP Updated Final Safety Analysis Report by departing from the incorporated plant-specific DCD Tier 2 and Tier 2 * information and related changes to the VEGP Units 3 and 4, COL Appendix A and COL Appendix C (and corresponding plant-specific DCD Tier 1) to modify an administrative program to incorporate the results of various updated plant-specific containment integrity analyses. The granting of the exemption allows the changes to Tier 1 information requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemptions and amendments are being issued concurrently.

DATES: The amendments were issued on November 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 *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@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 Document collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 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 designated License Amendment Request (LAR) 17–043 and submitted by letter dated December 21, 2017, and supplemented by letter dated September 28, 2018, (ADAMS Accession Nos. ML18029A243 and ML18271A188).
- *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: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@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. 147 and 146 to COLs, NPF–91 and NPF–92, to SNC.

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 SNC to depart from Tier 1 information. With the requested license amendment, SNC proposed changes to plant-specific DCD Tier 2 and Tier 2 * information and related changes to the VEGP Units 3 and 4, COL Appendix A and COL Appendix C (and corresponding plant-specific DCD Tier 1) to modify an administrative program to incorporate the results of various updated plant-specific containment integrity analyses.

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 exemptions 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 amendments met all applicable regulatory criteria and were found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML18289A753.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SNC 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. ML18289A750 and ML18289A752, 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. ML18289A745 and ML18289A748, 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 Unit 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 December 21, 2017, as supplemented September 28, 2018, SNC requested from the Commission an exemption to allow departure from Tier 1 information in the certified 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) 17–043, ''Containment Pressure Analysis.''

For the reasons set forth in Section 3.2 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML18289A753, 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, SNC 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 SNC's request dated December 21, 2017, as supplemented September 28, 2018. This exemption is related to, and necessary for the granting of License Amendment Nos. 147 [(Unit 3) and 146 (Unit 4)], which is being issued concurrently with this exemption.

3. As explained in the NRC staff's Safety Evaluation (ADAMS Accession No. ML18289A753), 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 December 21, 2017, as supplemented by letter dated September 28, 2018 (ADAMS Accession Nos. ML18029A243 and ML18271A188), SNC 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 May 8, 2018 (83 FR 20866). 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 SNC requested by letter December 21, 2017, and supplemented by letter dated September 28, 2018 (ADAMS Accession Nos. ML18029A243 and ML18271A188).

The exemptions and amendments were issued on November 7, 2018, as part of a combined package to SNC (ADAMS Package Accession No. ML18289A742).

Dated at Rockville, Maryland, this 26th day of February 2019.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 2, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2019–03680 Filed 2–28–19; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85188; File No. SR–NASDAQ–2019–008]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Communications With the Public

February 25, 2019.

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 February

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

19, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2210, titled ''Communications with the Public.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to update the reference to NASD Rule 2210 to FINRA Rule 2210.[3] The change is non-substantive as it simply reflects a change in the reference from the NASD rulebook to the FINRA rulebook. The Exchange believes the proposed rule change will remove confusion among Nasdaq members as to their obligations when communicating with the public.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and Section 6(b)(5) of the Act,[5] in particular, as it merely corrects a reference to the current FINRA rule. The proposed rule change will have no impact on just and equitable principles of trade or the protection of investors and the public interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change does not impose any burden on competition because it is a non-substantive change that imposes no new requirement on Nasdaq members.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) 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 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 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 for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[9] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, Nasdaq has asked the Commission to waive the 30-day operative delay to allow Nasdaq to immediately reflect the proper rule reference regarding the marketing materials requirement. Immediate implementation of the proposed rule change will avoid confusion by correcting the reference to the relevant FINRA rule regarding communications with the public.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[10]

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)[11] 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–NASDAQ–2019–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–008. 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 such filing also will be available for inspection and copying at the principal

[3] *See* Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (SR–FINRA–2011–035).

[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)(iii).

[10] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2)(B).

office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–008, and should be submitted on or before March 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03623 Filed 2–28–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85200; File No. SR–CboeEDGX–2019–005]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 20.6 To Apply the Obvious Error Rule to Stock-Option Orders, and To Amend Rules 21.1(d) and 21.20 To Add Qualified Contingent Cross With Stock Order Functionality

February 26, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend Rules [sic] 20.6 to apply the obvious error rule to stock-option orders, and to amend Rules 21.1(d) and 21.20 to add Qualified Contingent Cross with Stock Order (''QCC with Stock Order'') functionality. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

* * * * *

Rule 20.6. Nullification and Adjustment of Options Transactions Including Obvious Errors

The Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with this Rule. However, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(a)–(l) No change.

Interpretations and Policies

.01–.03 No change.

.04 Complex Orders *and Stock-Option Orders:*

(a)–(b) No change.

(c) If the option leg of a stock-option order qualifies as an Obvious Error under paragraph (c)(1) or a Catastrophic Error under paragraph (d)(1), then the option leg that is an Obvious or Catastrophic Error will be adjusted in accordance with paragraph (c)(4)(A) or (d)(3), respectively, regardless of whether one of the parties is a Customer. However, the option leg of any Customer order subject to this paragraph (c) will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the stock-option order, and the Exchange will attempt to nullify the stock leg. Whenever a stock trading venue nullifies the stock leg of a stock-option order or whenever the stock leg cannot be executed, the Exchange will nullify the option leg upon request of one of the parties to the transaction or in accordance with paragraph (c)(3).

* * * * *

Rule 21.1. Definitions

The following definitions apply to Chapter XXI for the trading of options listed on EDGX Options.

(a)–(c) No change.

(d) The term ''Order Type'' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (j) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System, and shall include:

(1)–(9) No change.

(10) A ''Qualified Contingent Cross Order'' is comprised of an originating order to buy or sell at least 1,000 standard option contracts that is identified as being part of a qualified contingent trade, as that term is defined in paragraph (A) below, coupled with a contra-side order or orders totaling an equal number of contracts. *See Rule 21.20 for a definition of a QCC with Stock Order.* For purposes of this order type:

* * * * *

Rule 21.20. Complex Orders

(a) No change.

(b) Availability of Types of Complex Orders. The Exchange will determine and communicate to Members via specifications and/or a Regulatory Circular listing when the complex order types, among the complex order types set forth in this Rule, are available for use on the Exchange. The complex order types that may be submitted are limit orders and market orders, and orders with a Time in Force of GTD, IOC, DAY, GTC, or OPG as such terms are defined in Rule 21.1(f). Users may not submit complex orders through bulk ports. The following complex orders will also be accepted by the Exchange:

(1)–(5) No change.

(6) QCC with Stock Orders. A ''QCC with Stock Order'' is a qualified contingent cross order, as defined in Rule 21.1(d)(10), entered with a stock component to be electronically communicated by the Exchange to a designated broker-dealer for execution on behalf of the submitting User pursuant to subparagraph (c)(7) below. QCC with Stock Orders are available to Users on a voluntary basis.

(c) Trading of Complex Orders. The Exchange will determine and communicate to Members via specifications and/or Regulatory Circular which complex order origin codes (*i.e.,* non-broker-dealer customers, broker-dealers that are not Market Makers on an options exchange, and/or Market Makers on an options exchange) are eligible for entry onto the COB. Complex orders will be subject to all other Exchange Rules that pertain to orders submitted to the Exchange generally, unless otherwise provided in this Rule.

(1)–(6) No change.

(7) QCC with Stock Orders. The System processes QCC with Stock Orders as follows:

(A) Entry of QCC with Stock Order. When a User enters a QCC with Stock Order on the Exchange, it enters a QCC Order with a stock component (pursuant to Rule 21.10(d)(10)). When entering a QCC with Stock Order, the User must:

(i) Include a net price for the stock and option components;

(ii) give up a Clearing Member in accordance with Rule 21.12; and

(iii) designate a specific broker-dealer to which the stock components will be communicated, which broker-dealer the Exchange must have identified as having connectivity to electronically communicate

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

the stock components of QCC with Stock Orders to stock trading venues and with which the User must have entered into a brokerage agreement (the ''designated broker-dealer''). The Exchange will have no financial arrangements with the broker-dealers it has identified with respect to communicating stock orders to them.

(B) Option Component.

(i) If the option component (i.e., the QCC Order) of a QCC with Stock Order can execute, the System executes it in accordance with Rule 21.8, but does not immediately send the User a trade execution report. The System then automatically communicates the stock component to the designated broker-dealer for execution at a stock trading venue.

(ii) If the option component of a QCC with Stock Order cannot execute, the System cancels the QCC with Stock Order, including both the stock and option components.

(C) Stock Component.

(i) If the System receives an execution report for the stock component of a QCC with Stock Order from the designated broker-dealer, the Exchange sends the User the trade execution report for the QCC with Stock Order, including execution information for both the stock and option components. The execution price of the buy (sell) stock leg of a QCC with Stock Order may be any price (including outside the NBBO for the stock leg), except the price must be permitted by Regulation SHO and the Limit Up-Limit Down Plan.

(ii) If the System receives a report from the designated broker-dealer that the stock component of a QCC with Stock Order cannot execute, the Exchange nullifies the option component trade and notifies the User of the reason for the nullification.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (''Cboe Global''), which is the parent company of Cboe Exchange, Inc. (''Cboe Options'') and Cboe C2 Exchange, Inc. (''C2''), acquired the Exchange, Cboe EDGA Exchange, Inc. (''EDGA''), Cboe BZX Exchange, Inc. (''BZX or BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with C2, Cboe Options, the Exchange, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its technology to the same trading platform used by the Exchange, C2, and BZX Options in the fourth quarter of 2019. The proposal set forth below is intended to add certain functionality to the Exchange's System that is available on Cboe Options in order to ultimately provide a consistent technology offering for market participants who interact with the Cboe Affiliated Exchanges. Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

QCC With Stock Order

The Exchange proposes to offer QCC with Stock Order functionality to Users. QCC with Stock Order functionality facilitates the execution of the stock component of qualified contingent trades (''QCTs''). Specifically, a QCC with Stock Order is a QCC order entered with a stock component to be communicated to a designated broker-dealer for execution. QCC with Stock Orders will assist Users in maintaining compliance with rules regarding the execution of the stock components of QCTs, and help maintain an audit trail for surveillance of Users for compliance with such rules. Currently, although the Exchange offers qualified contingent cross (''QCC'') order functionality, it does not facilitate electronic communication of the stock component of QCC orders for execution. The proposed rule change provides Users with the option to electronically submit the stock component of QCC orders to the Exchange, and describes how the Exchange will electronically communicate the stock component to a designated broker-dealer for execution on behalf of Users.

A QCC order is comprised of an originating order to buy or sell at least 1000 contracts that is identified as being part of a QCT,[5] coupled with a contra-side order or orders totaling an equal number of contracts. QCC orders may execute without exposure provided the execution (1) is not at the same price as a public customer order resting in the electronic book and (2) is at or between the national best bid or offer (''NBBO'').[6] QCC orders will be cancelled if they cannot be executed.[7]

Since QCC orders represent one component of a QCT, each QCC order must be paired with a stock order. When a User enters a QCC order, the User is responsible for executing the associated stock component of the QCT within a reasonable period of time after the QCC order is executed. The Exchange conducts surveillance of Users to ensure that Users execute the stock component of a QCT at or near the same time as the options component. While the Exchange does not specify how the User should go about executing the stock component of the trade, this process is often manual and is therefore a compliance risk for Users if they do not execute the stock component within a reasonable time period of execution of the options component. Thus, the Exchange is proposing to offer QCC with Stock Order functionality, pursuant to which the Exchange will automatically communicate the stock component of a QCT to a designated broker-dealer for execution in connection with the execution of a QCC order on the Exchange. This functionality will

[5] *See* Rule 21.1(d)(10). A ''qualified contingent trade'' is a transaction consisting of two or more component orders, executed as agent or principal, where: (1) At least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (2) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined by the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. The proposed rule change amends Rule 21.1(d)(10) to add a cross-reference to the proposed definition of a QCC with Stock Order in Rule 21.20.

[6] *See* Rule 21.1(d)(10).

[7] *Id.*

reduce the compliance burden on Users by providing an automated means of executing the stock component of a QCT, and also will provide benefits for the Exchange's surveillance by providing an audit trail for the execution of the stock component. QCC with Stock Orders can be entered by Users through a front-end order and execution management system or through a User's own electronic connection to the Exchange.

QCC with Stock Orders will be available to all Users on a voluntary basis.[8] Under the proposed rule, when a User enters a QCC with Stock Order on the Exchange, it enters a QCC order with a stock component (pursuant to Rule 21.1(d)(10)). When entering a QCC with Stock Order, the User must:

- Enter a net price for the stock and option components. Net-priced QCC with Stock Orders reduce the chance that Users will miss the market since the Exchange will calculate a price for the stock and options components that honors the net price of the package and current market prices, if possible. It is also consistent with the use of QCTs.[9] The Exchange will not allow QCC with Stock Orders with a specified price for the stock component or the option component;
- give up a Clearing Member in accordance with Rule 21.12. Pursuant to Rule 21.12, a User must give up a Clearing Member it previously identified to the Exchange as a Designated Give Up for that User for all orders it submits to the Exchange; and
- designate a specific broker-dealer to which the stock components will be communicated, which broker-dealer the Exchange must have identified as having connectivity to electronically communicate the stock components of QCC with Stock Orders to stock trading venues and with which the User must have entered into a brokerage agreement (the ''designated broker-dealer''). The Exchange will have no financial arrangements with any broker-dealer it has identified with respect to communicating stock orders to them.[10] The Exchange currently has one broker-dealer that has established connectivity for executing the stock component of QCC with Stock Orders. If the Exchange adds more in the future, and the User enters into brokerage agreements with multiple of the broker-dealers designated by the Exchange, the User must specify to which broker-dealer the Exchange should communicate the stock components of its QCC with Stock Orders when entering QCC with Stock Orders.

Current Exchange fees applicable to QCC orders will apply to the options component of QCC with Stock Orders.[11] To the extent the Exchange will apply a fee to the stock component of QCC with Stock Orders, the Exchange will submit a separate rule filing to adopt such a fee.

If the option component of a QCC with Stock Order satisfies the conditions of proposed Rule 21.20(b)(6) [sic] upon entry, the System executes the order in accordance with Rule 21.8 (which describes how simple option orders execute). However, the Exchange does not immediately send the User a trade execution report for this option execution.[12] Because the User submitted a QCC with Stock Order to execute as a package, the Exchange waits to send a trade execution report to the User until after it has determined whether all components of the QCC with Stock Order have executed, as described below. After the QCC order is executed, the Exchange will then automatically communicate the stock component to the designated broker-dealer for execution.

Although the option component (which is a QCC order) of a QCC with Stock Order is eligible for automatic execution, it is possible that the option component order may not be executable based on market prices at the time the order is entered (*e.g.* the order would execute at the same price as a customer). If the QCC order cannot execute after one attempt, the System cancels the QCC with Stock Order, including both the stock and options components. This prevents execution of the stock component of a QCT where the options component has not been successfully executed, consistent with the purpose of contingent trades and the QCT exemption.

As noted above, if the option component executes, the System then automatically communicates the stock component to the designated broker-dealer for execution. If the System receives an execution report for the stock component of a QCC with Stock Order from the designated broker-dealer, the Exchange sends the User the trade execution report for the QCC with Stock Order, including execution information for both the stock and option components. However, if the System receives a report from the designated broker-dealer that the stock component of the QCC with Stock Order cannot execute,[13] the Exchange nullifies the option component trade and notifies the User of the reason for the nullification.[14] This proposed rule change prevents execution of the option component of a QCT where the stock component has not been successfully executed, just as the proposed rule change prevents execution of the stock component of a QCT where the option component has not been successfully executed by cancelling the stock component if the option component cannot execute.

Currently, whenever a stock trading venue nullifies the stock leg of a stock-option order or whenever the stock leg cannot execute, the Exchange will nullify the option leg upon request of one of the parties to the transaction or on an Exchange Official's own motion in accordance with the Rules.[15] As noted above, to qualify as a QCT, the execution of one component is contingent upon the execution of all other components at or near the same time.[16] Given this requirement, if the

[8] *See* proposed Rule 21.20(b)(6).

[9] *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829, 52831 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS Under the Securities Exchange Act of 1934) (''QCT Exemption Order''). In its exemption request, the Securities Industry Association (''SIA'') indicated parties to a contingent transaction are focused on the spread or ratio between the transaction prices for each of the component instruments, rather than on the absolute price of any single component instrument. The SIA also noted the economics of a contingent trade are based on the relationship between the prices of the security and related derivative or security. *See* Letter to Nancy M. Morris, Secretary, Commission, from Andrew Madoff, SIA Trading Committee, SIA, dated June 21, 2006 (''SIA Exemption Request''), at 2.

[10] The Exchange also represents that broker dealers it identifies as having connectivity to electronically communicate the stock components of QCC with Stock Orders to stock trading venues do not receive other special benefits related to trading on the exchange.

[11] *See* Cboe EDGX Options Fee Schedule.

[12] Even though the Exchange does not send the User an execution report immediately following execution of the option component, the Exchange disseminates the trade at that time pursuant to the OPRA Plan and creates a record to be sent to the Clearing Corporation.

[13] For example, if the stock execution venue to which the designated broker-dealer routed the stock component is experiencing system issues, the stock component may not be able to execute. Additionally, the Exchange understands certain stock execution venues apply risk controls to the stock components of QCTs, which may prevent execution of the stock components at certain prices.

[14] The Exchange will nullify the option component trade in the same manner as it currently nullifies any other trades (when nullification is permitted under the Rules).

[15] *See* proposed Rule 20.6, Interpretation and Policy .04(c). As discussed below, proposed Rule 20.6, Interpretation and Policy .04(c) is virtually identical to rules of other options exchanges. Pursuant to Rule 20.6, other nullifications may generally occur only if both parties agree.

[16] *See* QCT Exemption Order, which requires the execution of one component of the QCT to be contingent upon the execution of all other components at or near the same time to qualify for the exemption. In the SIA Exemption Request, the

stock component does not execute at or near the same time as the option component, it is reasonable to expect a User that submitted a QCC with Stock Order to request such nullification.[17] If the stock component does not execute, rather than require the User that submitted the QCC with Stock Order to contact the Exchange to request the nullification of the option component execution pursuant to proposed Rule 20.6, Interpretation and Policy .04 if the stock component cannot execute, the proposed rule change simply eliminates this requirement for the submitting User to make such a request. Instead, the proposed rule states the Exchange will automatically nullify the option transaction if the stock component does not execute. The Exchange believes such nullification without a request from the User is consistent with the definitions of QCC and QCT orders. The proposed rule change merely automates an otherwise manual process for Users.

Additionally, the Exchange believes this automatic nullification will reduce any compliance risk for the User associated with execution of a QCC order and lack of execution of a stock order at or near the same time.[18] The Exchange conducts surveillance to ensure a User executes the stock component of a QCT, which will also apply to QCC with Stock Orders, if the option component executed. As a result, if the stock component does not execute when initially submitted to a stock trading venue by the designated broker-dealer, a User may be subject to compliance risk if it does not execute the stock component within a reasonable time period of the execution of the option component. The proposed rule change reduces this compliance risk for Users.

Example 1:
Stock NBBO: $100 × $101
Option NBBO: $1 × $2

A User submits a QCC with Stock Order buying 1,000 puts and 100,000 shares of stock with a net price of $101.50. A QCC order is entered on the Exchange and executed at a price of $1.50. The Exchange reports this trade to OPRA. The Exchange routes the stock component to an Exchange-designed broker-dealer at a price of $100. The Exchange receives a trade execution report from the designated broker-dealer that the stock component executed at $100, and sends a trade execution report for both components of the QCC with Stock Order to the User.

Example 2:
Stock NBBO: $100 × $101
Option NBBO: $1 × $2

A User submits a QCC with Stock Order buying 1,000 puts and 100,000 shares of stock with a net price of $101.50. A QCC order is entered on the Exchange and executed at a price of $1.50. The Exchange reports this trade to OPRA. The Exchange routes the stock component to an Exchange-designed broker-dealer at a price of $100. The Exchange receives a report from the designated broker-dealer that the stock component did not execute. The Exchange nullifies the option component trade, and sends a report to the User of the reason for the nullification.

Example 3:
Stock NBBO: $100 × $101
ABBO: $1.00 × $1.05
Exchange BBO: $1.00 (Priority Customer) × 1.01 (Priority Customer)

A User submits a QCC with Stock Order buying 1,000 puts and 100,000 shares of stock with a net price of 101.01. A QCC order is entered on the Exchange at a price of $1.01. Because the QCC order is at the same price as a priority customer order resting on the Exchange, the Exchange cancels the QCC with Stock Order.

Obvious Error

The proposed rule change applies much of current Rule 20.6 to stock-option orders.[19] The proposed rule change deviates from the current rule only to account for the unique qualities of stock-option orders. The proposed rule reflects the fact that stock-option orders contain a stock component that is executed on a stock trading venue, and the Exchange may not be able to ensure that the stock trading venue will adjust or nullify the stock execution in the event of an obvious or catastrophic error.

Proposed Interpretation and Policy .04(c) governs stock-option orders. It provides that if the option leg of a stock-option order qualifies as an Obvious Error under subparagraph (c)(1) or a Catastrophic Error under subparagraph (d)(1), then the option leg that is an Obvious or Catastrophic Error will be adjusted in accordance with subparagraph (c)(4)(A) or (d)(3), respectively, regardless of whether one of the parties is a Customer. However, the option leg of any Customer order subject to proposed Interpretation and Policy .04(c) will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the stock-option order, and the Exchange will attempt to nullify the stock leg. Whenever a stock trading venue nullifies the stock leg of a stock-option order or whenever the stock leg cannot be executed, the Exchange will nullify the option leg upon request of one of the parties to the transaction or in accordance with subparagraph (c)(3).

Similar to Interpretation and Policy .04(a), an options leg (or legs) of a stock-option order must qualify as an obvious or catastrophic error under the Current Rule in order for the stock-option order to qualify as an obvious or catastrophic error. Also similar to Interpretation and Policy .04(a), if an options leg (or legs) does qualify as an obvious or catastrophic error, the option leg (or legs) will be adjusted in accordance with subparagraph (c)(4)(A) or (d)(3), respectively, regardless of whether one of the parties is a Customer. Again, as with Interpretation and Policy .04(a), where at least one party to a complex order transaction is a Customer, the Exchange will nullify the option leg and attempt to nullify the stock leg if adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the complex order or individual leg(s).

The stock leg of a stock-option order is not executed on the Exchange; rather, the stock leg is sent to a stock trading venue for execution. The Exchange is unaware of a mechanism by which the Exchange can guarantee that the stock leg will be nullified by the stock trading venue in the event of an obvious or

SIA stated that for contingent trades, the execution of one order is contingent upon the execution of the other order. SIA further stated that, by breaking up one or more components of a contingent trade and requiring that such components be separately executed, one or more parties may trade ''out of hedge.'' *See* SIA Exemption Request at 3. In the words of Rob Base and DJ E–Z Rock, it takes two (executions) to make a thing (a QCT) go right.

[17] As set forth in Rule 21.1(d)(10), when submitting a QCC order, a User submits an order as well as a contra-side order or orders totaling an equal number of contracts, which execute against each other if they satisfy the conditions set forth in that Rule. As a result, if that User requests nullification of the QCC order execution (or as proposed, if the Exchange automatically nullifies the QCC order execution) if the stock component cannot execute, no other party is impacted by the nullification.

[18] In the SIA Exemption Request, the SIA stated that parties to a contingent trade will not execute one side of the trade without the other component or components being executed in full (or in ratio) and at the specified spread or ratio. *See* SIA Exemption Request at 2. While a broker-dealer could re-submit the stock component to a stock trading venue or execution after it initially fails to execute, there is a compliance risk that the time at which the stock component executes is not close enough to the time at which the option component executed.

[19] In order for a stock-option order to qualify as an obvious or catastrophic error, at least one of the legs must itself qualify as an obvious or catastrophic error under current Rule 21.20. *See* Rule 20.6, Interpretation and Policy .04. A QCC with Stock Order is a type of stock-option order.

catastrophic error on the Exchange. Thus, in the event of the nullification of the option leg pursuant to proposed Interpretation and Policy .04(c), the Exchange will attempt to have the stock leg nullified by the stock trading venue by either contacting the stock trading venue or notifying the parties to the transaction that the option leg is being nullified. The party or parties to the transaction may ultimately need to contact the stock trading venue to have the stock portion nullified.

Finally, the Exchange proposes to provide guidance that whenever the stock trading venue nullifies the stock leg of a stock-option order, the option will be nullified upon request of one of the parties to the transaction or by an Official acting on their own motion in accordance with subparagraph (c)(3). There are situations in which buyer and seller agree to trade a stock-option order, but the stock leg cannot be executed. The Exchange proposes to provide guidance that whenever the stock portion of a stock-option order cannot be executed, the Exchange will nullify the option leg upon request of one of the parties to the transaction or on an Official's own motion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is designed to promote just and equitable principles of trade because it will provide Users with optional functionality to facilitate the stock component of a QCT. The QCC with Stock Order is an optional piece of functionality offered to Users to communicate the stock component of a QCT to a designated broker-dealer for execution. A User that does not wish to use QCC with Stock Order functionality can continue to execute a QCT by entering a QCC order on the Exchange and separately executing the stock component of the QCT [sic] another venue, as it may do today. A User can also build its own technology to electronically communicate the stock component of any QCT to a broker-dealer for execution.

QCC with Stock Orders reduce Users' compliance burden because it allows for the automatic submission of the stock component of a QCT in connection with the execution of the options component(s) as a QCC order on the Exchange. QCC with Stock Order functionality also provides benefits to the Exchange by establishing an audit trail for the execution of the stock component of a QCT within a reasonable period of time after the execution of the QCC order. The proposed rule change further reduces Users' compliance risk by providing that the Exchange will, in addition to cancelling the stock component if the option component cannot execute, nullify any option component execution when the stock component does not execute without a request from the User. Nullification of the option trade is consistent with the requirement that a User must execute the stock component of a QCT within a reasonable period of time after executing the option component on the Exchange as a QCC order. The proposed rule change simply eliminates the requirement that one party to the transaction request nullification of the option component trade before the Exchange nullifies the option trade (as proposed), because such nullification is consistent with the definitions of QCC orders and QCT. The proposed rule change merely automates an otherwise manual process for Users. As noted above, to qualify as a QCT, the execution of one component is contingent upon the execution of all other components at or near the same time.[23] Since the purpose of a QCC with Stock Order is for all components to trade at or near the same time, if the stock component does not execute at or near the same time as the option component, it is reasonable to expect a User that submitted a QCC with Stock Order to request such nullification to avoid any compliance risk associated with execution of a QCC order and lack of execution of a stock order at or near the same time.[24]

The Exchange conducts surveillance to ensure a User executes the stock component of a QCT, which will also apply to QCC with Stock Orders, if the option component executed. As a result, if the stock component does not execute when initially submitted to a stock trading venue by the designated broker-dealer, a User may be subject to compliance risk if it does not execute the stock component within a reasonable time period of the execution of the option component. The proposed rule change reduces this compliance risk for Users. The Exchange therefore believes the proposed rule change removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest.

The Exchange believes the proposed rule change to require a User to submit a QCC with Stock Order with a net price will also perfect the mechanism of a free and open market and a national market system and protect investors, because a net price will reduce the chance that Users will miss the market since the Exchange will calculate a price for the stock and options components that honors the net price of the package and current market prices, if possible. As noted above, a User that wants to enter a net price for the stock and option components can execute a QCT by entering a QCC order on the Exchange and separately executing the stock component of the QCT [sic] another venue, as it may do today. As noted above, submission of a QCC with Stock Order is consistent with the use of QCTs.[25]

Additionally, the proposed functionality is similar to functionality offered by another options exchange[26] and consistent with the QCT exemption previously approved by the Commission.[27]

The proposed rule change to adopt obvious error provisions stock-option orders is consistent with efforts among options exchanges to seek harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the proposed rule change will provide greater transparency and clarity with

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] *See supra* notes 5 and 16.

[24] *See supra* note 18.

[25] *See supra* notes 5, 16, and 18.

[26] *See* Cboe Options Rules 6.53(u) and 6.53C, Interpretation and Policy .06(g); *see also* Nasdaq ISE, LLC (''ISE'') Rules 715(t) and 721(c) and Supplementary Material.

[27] *See* QCT Exemption Order.

respect to the adjustment and nullification of erroneous options transactions. The proposed rule change is virtually identical to the rules of other options exchanges.[28] Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act[29] in that the proposed rule change will foster cooperation and coordination with persons engaged in regulating and facilitating transactions [sic].

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Options Members, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in certain places between Customers and non-Customers. As with the Current Rule, Customers are treated differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes its proposal related to stock-option orders is consistent with the Act. Stock-option orders consist of an option component and a stock component. Due to the fact that the Exchange has no control over the venues on which the stock is executed the proposal focuses on the option component of the stock-option order by adjusting or nullifying the option in accordance with subparagraph (c)(4)(A) or (d)(3). Also, nullifying the option component if the stock component cannot be executed ensures that market participants receive the execution for which they bargained. Stock-option orders are negotiated and agreed to as a package; thus, if for any reason the stock portion of a stock-option order cannot ultimately be executed, the parties should not be saddled with an options position sans stock.

The proposed rule change is generally intended to align system functionality currently offered by the Exchange with Cboe Options functionality in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes, and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges. The proposed rule change would also provide Users with access to functionality that is generally available on options exchanges other than the Cboe Affiliated Exchanges,[30] which may result in the more efficient execution of QCTs and provide Users with additional flexibility and increased functionality on the Exchange's System. Additionally, the proposed functionality is consistent with the QCT exemption previously approved by the Commission.[31] The Exchange believes this consistency will promote a fair and orderly national options market system.

When Cboe Options migrates to the same technology as that of the Exchange and other Cboe Affiliated Exchanges, Users of the Exchange and other Cboe Affiliated Exchanges will have access to similar functionality on all Cboe Affiliated Exchanges. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. QCC with Stock Orders facilitate Users [sic] compliance with the requirements associated with executing QCC orders on the Exchange, and are not designed to impose any unnecessary burden on competition. QCC with Stock Order functionality is available to Users on a voluntary basis, and Users are not required to use QCC with Stock Orders when executing QCTs. The proposed rule change has no impact on Users that elect to execute QCTs without using QCC with Stock Order functionality. Those Users may continue to execute QCTS [sic] in the same manner as they do today by entering a QCC order on the Exchange and separately executing the stock component of the QCT another venue. A User can also build its own technology to electronically communicate the stock component of any QCT to a broker-dealer for execution. For Users that elect to use QCC with Stock Order functionality to execute QCTs, the proposed rule change reduces those Users' compliance burdens to satisfy their obligation to execute the related stock component of the QCT within a reasonable period of time after the QCC order is executed on the Exchange, as this functionality provides an automated means for satisfying this obligation.

QCC with Stock Orders are available to all Users either through a front-end order and execution management system or through a User's own electronic connection to the Exchange. Additionally, the proposed functionality is similar to functionality offered by another options exchange[32] and consistent with the QCT exemption previously approved by the Commission.[33]

The Exchange believes the proposed rule change to adopt obvious error rules related to stock-option orders will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all

[28] *See, e.g.,* Cboe Options Rule 6.25, Interpretation and Policy .07; ISE Rule 720, Supplementary Material .05; and MIAX Rule 521, Interpretation and Policy .03.

[29] 15 U.S.C. 78f(b)(5).

[30] *See* Cboe Options Rules 6.53(u) and 6.53C, Interpretation and Policy .06 (which permits QCC orders with one or more option components and QCC with Stock Orders, and stock-option orders with one or more option legs, respectively); ISE Rules 715(t) and 721(c) and Supplementary Material .01 through .03 (which permits QCC orders and QCC with stock orders); and MIAX Rule 518 (which permits stock-option orders with one or more option legs and QCC orders with one or more option components).

[31] *See* QCT Exemption Order.

[32] *See* Cboe Options Rules 6.53(u) and 6.53C, Interpretation and Policy .06(g); *see also* ISE Rules 715(t) and 721(c) and Supplementary Material.

[33] *See* QCT Exemption Order.

options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. Several other options exchanges have virtually identical rules.[34]

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the obvious error provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the proposed rule change acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[34] *See* Cboe Options Rule 6.25, Interpretation and Policy .07, ISE Rule 720, Supplementary Material .05, and MIAX Rule 521, Interpretation and Policy .03.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 [35] and Rule 19b–4(f)(6) [36] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–005 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–CboeEDGX–2019–005. 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–CboeEDGX–2019–005 and should be submitted on or before March 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03705 Filed 2–28–19; 8:45 am]

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[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b–4(f)(6).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85201; File No. SR–BOX–2019–04]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility To Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

February 26, 2019.

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 February 13, 2019, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to establish BOX Connectivity Fees for Participants and non-Participants who connect to the BOX network. 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://boxexchange.com.*

II. Self-Regulatory Organization's Description of the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section VI. (Technology Fees) of the BOX Fee Schedule to establish BOX Connectivity Fees for Participants and non-Participants who connect to the BOX network. Connectivity fees will be based upon the amount of bandwidth that will be used by the Participant or non-Participant. Further, BOX Participants or non-Participants connected as of the last trading day of each calendar month will be charged the applicable Connectivity Fee for that month. The Connectivity Fees will be as follows:

Connection type	Monthly fees
Non-10 Gb Connection.	$1,000 per connection.
10 Gb Connection	$5,000 per connection.

The Exchange also proposes to amend certain language and numbering in Section VI.A to reflect the changes discussed above. Specifically, BOX proposes to add the title ''Third Party Connectivity Fees'' under Section VI.A. Further, the Exchange proposes to add Section VI.A.2, which details the proposed BOX Connectivity Fees discussed above.

Participants and non-Participants with ten (10) Gigabit (''Gb'') connections will be charged a monthly fee of $5,000 per connection. Participants and non-Participants with non-10 Gb connections will be charged a monthly fee of $1,000 per connection. The Exchange notes that another exchange in the industry has similar connectivity fees [5] and that several other exchanges charge higher connectivity fees.[6] The Exchange also notes that certain fees will continue to be assessed by the datacenters and will be billed directly to the market participant.

Next, the Exchange is amending Section VI.C. High Speed Vendor Feed (''HSVF'') of the Fee Schedule. Specifically, BOX is proposing to delete Section VI.C. and reclassify the HSVF Connection as a Port Fee. The Exchange believes this reclassification is more accurate, as HSVF subscription is not dependent on a physical connection to the Exchange. Instead, subscribers must be credentialed by BOX to receive the HSVF. The HSVF Fee will remain unchanged; BOX will assess a HSVF Port Fee of $1,500 per month [7] for each month a Participant or non-Participant is credentialed to use the HSVF Port. The Exchange notes that another exchange has a similar classification and charges similar fees.[8]

The Exchange initially filed the proposed fees on July 19, 2018, designating the proposed fees effective July 1, 2018 [sic]. The proposed rule change was published for comment in the **Federal Register** on August 2, 2018.[9] The Commission received one comment letter on the proposal.[10] The proposed fees remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Division of Trading and Markets, which also instituted proceedings to determine whether to approve or disapprove the proposed rule change.[11] The Commission subsequently received one further comment letter on the proposed rule change, supporting the decision to suspend and institute proceedings on the proposed fee change.[12]

In response to the Suspension Order, the Exchange timely filed a Notice of Intention to Petition for Review [13] and Petition for Review to vacate the Division's Order,[14] which stayed the Division's suspension of the filing. On November 16, 2018 the Commission granted the Exchange's Petition for Review but discontinued the automatic stay.[15] The Exchange then filed a

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Miami International Securities Exchange LLC (''MIAX'') Fee Schedule. MIAX charges its Members and non-Members a monthly fee of $1,100 for each 1 Gigabit connection and $5,500 for each 10 Gigabit connection to MIAX's Primary/Secondary Facility. The Exchange notes a minor difference between MIAX's connectivity fees and BOX's proposal. MIAX prorates their connectivity fees when a Member makes a change to their connectivity (by adding or deleting connections). BOX notes that, like the Exchange's Port Fees and HSVF Fees, Participants or non-Participants connected as of the last trading day of each calendar month will be charged the applicable Connectivity Fee for that month.

[6] *See infra* note 12.

[7] The Exchange notes that with the proposed change discussed herein, Participants and non-Participants credentialed to use the HSVF Port who also have physical connections to the BOX system will be charged for both the HSVF monthly fee and the applicable amount for their physical connections to BOX. For example, if non-Participant X is credentialed to use the HSVF Port and has three (3) physical non-10Gb connections to BOX, non-Participant X will be charged $1500 for the monthly HSVF Port Fee and $3000 for the three non-10Gb physical connections to BOX.

[8] *See* Cboe Data Services, LLC. (''Cboe CDS'') Fee Schedule. Cboe CDS charges its Customers that receive data through a direct connection to CDS or through a connection to CDS provided by an extranet provider $500 per port per month. Cboe CDS's port fee applies to receipt of any Cboe Options data feed but is only assessed once per data port. In addition to the data port fee, Cboe Exchange Inc. (''Cboe'') charges connectivity fees based on the bandwidth used to connect to the Exchange to receive such data. *See* Cboe Fee Schedule.

[9] *See* Securities Exchange Act Release No. 83728 (July 27, 2018), 83 FR 37853 (August 2, 2018) (SR–BOX–2018–24).

[10] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated August 23, 2018 (''Healthy Markets Letter'').

[11] *See* Securities Exchange Act Release No. 34–84168 (September 17, 2018).

[12] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association, dated October 15, 2018.

[13] *See* Letter from Amir Tayrani, Partner, Gibson, Dunn & Crutcher LLP, dated September 19, 2018.

[14] *See* Petition for Review of Order Temporarily Suspending BOX Exchange LLC's Proposal to Amend the Fee Schedule on BOX Market LLC, dated September 26, 2018.

[15] *See* Securities Exchange Act Release No. 84614. Order Granting Petition for Review and Scheduling Filing of Statements, dated November 16, 2018. Separately, the Securities Industry and Financial Markets Association filed an application under Section 19(d) of the Exchange Act challenging the

Continued

statement to reiterate the arguments set for in its petition for review and to supplement that petition with additional information.[16]

The Exchange subsequently refiled its fee proposal on November 30th, 2018. The proposed fees were noticed and again temporarily suspended pursuant to a suspension order issued by the Division of Trading and Markets, which also instituted proceedings to determine whether to approve or disapprove the proposed rule change.[17] The Commission received two comment letters supporting the decision to suspend and institute proceedings on the proposed fee change.[18]

The SIFMA, Healthy Markets and Chester Spatt Comment Letters (collectively, the ''Comment Letters'') argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Comment Letters objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Comment Letters argued that the Exchange did not offer any details to support its basis for asserting that the proposed fees are consistent with the Act.

The Exchange is once again re-filing the proposed fees. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange has always offered various bandwidth choices for physical connectivity to the Exchange for Participants and non-Participants to access the Exchange's trading platforms, market data, test systems and disaster recovery facilities. These physical connections consist of 10Gb and non-10Gb connections, where the 10Gb connection provides for faster processing of messages sent to it in comparison to the non-10Gb connection. While the Exchange has not charged for physical connectivity before, the Exchange believes that it is reasonable and appropriate to begin charging for this physical connectivity to partially offset the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the US options industry. Additionally, there are significant costs associated with various projects and initiatives to improve overall network performance and stability, as well as costs paid to the third-party data centers for space rental, power used, etc. The Exchange notes that unlike other options exchanges, the Exchange does not own and operate its own data center and therefore cannot control data center costs.

The Exchange also notes that all other options exchanges charge for similar physical connectivity,[19] and by suspending the Exchange's initial fee filing the Division has placed the Exchange at a competitive disadvantage within the US options industry. Without these fees to partially offset the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the US options industry, the Exchange may not be able to make the planned enhancements to its infrastructure.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[20] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Connectivity Fees in general constitute an equitable allocation of fees, and are not unfairly discriminatory, because they allow the Exchange to recover costs associated with offering access through the network connections. The proposed Connectivity Fees are also expected to offset the costs both the Exchange and BOX incur in maintaining and implementing ongoing improvements to the trading systems, including connectivity costs, costs incurred on software and hardware enhancements and resources dedicated to software development, quality assurance, and technology support. The Exchange believes that its proposed fees are reasonable in that they are comparable to those charged by another exchange and lower than those charged by several other exchanges. Further, the Exchange believes that the proposed Connectivity Fees are not unfairly discriminatory as they are assessed to all market participants who wish to connect to the BOX network.

The Exchange believes that the proposed HSVF Port Fee is reasonable as it is similar to fees assessed at another exchange in the industry.[21] Further, the Exchange believes that charging Participants and non-Participants for both the HSVF monthly fee and applicable physical connection fees as outlined in the example above is reasonable as it is in line with another exchange in the industry.[22] Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it allows the Exchange to recoup ongoing expenditures made by the Exchange in

Exchange's proposed fees as alleged prohibitions or limitations on access. *See In re Securities Industry and Financial Markets Association,* Admin. Proc. File No. 3–18680 (Aug. 24, 2018). The Commission thereafter remanded that denial-of-access proceeding to the Exchange while ''express[ing] no view regarding the merits'' and emphasizing that it was ''not set[ting] aside the challenged rule change [].'' *In re Applications of SIFMA & Bloomberg,* Exchange Act Rel. No. 84433, at 2 (Oct. 16, 2018) (''Remand Order''), *available at https://www.sec.gov/litigation/opinions/2018/34-84433.pdf.* The Division's Suspension Order is inconsistent with the Commission's intent in the Remand Order to leave the challenged fees in place during the pendency of the remand proceedings and singles out the Exchange for disparate treatment because it means that the Exchange—unlike every other exchange whose rule changes were the subject of the Remand Order—is not permitted to continue charging the challenged fees during the remand proceedings.

[16] *See* Letter from Amir Tayrani, Partner, Gibson, Dunn & Crutcher LLP, dated December 10, 2018.

[17] *See* Securities Exchange Act Release No. 84823 (December 14, 2018), 83 FR 65381 (December 20, 2018) (SR–BOX–2018–37).

[18] *See* Letters from Tyler Gellasch, Executive Director, The Healthy Markets Association (''Second Healthy Markets Letter''), and Chester Spatt, Pamela R. and Kenneth B. Dunn Professor of Finance, Tepper School of Business, Carnegie Mellon University (''Chester Spatt Letter''), to Brent J. Fields, Secretary, Commission, dated January 2, 2019.

[19] In addition to the MIAX connectivity fees cited above, Nasdaq PHLX LLC (''Phlx''), The Nasdaq Stock Market LLC (''Nasdaq''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American''), Nasdaq ISE, LLC (''ISE''), Cboe Exchange, Inc. (''Cboe''), Cboe BZX Exchange, Inc. (''CboeBZX''), Cboe EDGX Exchange, Inc. (''CboeEDGX'') and Cboe C2 Exchange, Inc. (''C2'') all offer a type of 10Gb and non-10Gb connectivity alternative to their participants. See Phlx, and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which is the equivalent of the Exchange's 10Gb ULL connection. See also Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of $7,500 for each 10Gb direct connection to Nasdaq and $2,500 for each direct connection that supports up to 1Gb. See also NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which is the equivalent of the Exchange's 10Gb ULL connection. See also Cboe, CboeBZX, CboeEDGX and C2 Fee Schedules. Cboe charges monthly quoting and order entry bandwidth packet fees. Specifically, Cboe charges $1,600 for the 1st through 5th packet, $800 for the 6th through 8th packet, $400 for the 9th through 13th packet and $200 for the 14th packet and each additional packet. CboeBZX, CboeEDGX and C2 each charge a monthly fee of $2,500 for each 1Gb connection and $7,500 for each 10Gb connection.

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] *See supra* note 8.

[22] *Id.*

order to offer such services to Participants and non-Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Unilateral action by the Exchange in establishing fees for services provided to its Participants and others using its facilities will not have an impact on competition. As a small exchange in the already highly competitive environment for options trading, the Exchange does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Exchange Act. The Exchange's proposed fees, as described herein, are comparable to and generally lower than fees charged by other options exchanges for the same or similar services. Lastly, the Exchange believes the proposed change will not impose a burden on intramarket competition as the proposed fees are applicable to all Participants and others using its facilities that connect to BOX.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[23] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[24] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

Identical fee changes to those proposed herein were originally filed on July 19, 2018. That proposal, BOX–2018–24, was published for comment in the **Federal Register** on August 2, 2018.[25] The Commission received one comment letter on that proposal.[26] On September 17, 2018, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[27] The Commission received one additional comment letter on that proposal in response to the Order Instituting Proceedings.[28] On September 19, 2018, pursuant to Rule 430 of the Commission's Rules of Practice,[29] the Exchange filed a notice of intention to petition for review of the Order Instituting Proceedings and, on September 26, 2018, the Exchange filed a petition for review of the Order Instituting Proceedings.[30] On November 16, 2018, the Commission granted the Exchange's Petition and discontinued the automatic stay of delegated action.[31] In addition, the Commission ordered that any party or other person could file a statement in support or in opposition to the action made by delegated authority provided such statement was filed on or before December 10, 2018.[32] The Commission received two such statements from the Exchange.[33]

Identical fee changes to those proposed herein were again filed on November 30, 2018. That proposal, BOX–2018–37, was published for comment in the **Federal Register** on December 20, 2018.[34] Simultaneous with the publication of such notice, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[35] The Commission received two comment letters in response to the proposal.[36] The instant filing proposes identical fees and raises similar concerns as to whether they are consistent with the Act.[37]

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[38] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [39]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;[40] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[41] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[42]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed fees to connect to the Exchange are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[43]

[23] 15 U.S.C. 78s(b)(3)(C).

[24] 15 U.S.C. 78s(b)(1).

[25] *See supra* note 9, and accompanying text.

[26] *See supra* note 10.

[27] *See* Securities Exchange Act Release No. 84168 (September 17, 2018), 83 FR 47947 (September 21, 2018) (''Order Instituting Proceedings'').

[28] *See supra* note 12.

[29] 17 CFR 201.430.

[30] *See supra* notes 13–14, and accompanying text. Pursuant to Rule 431(e) of the Commission's Rules of Practice, a notice of intention to petition for review results in an automatic stay of the action by delegated authority. 17 CFR 201.431(e).

[31] *See supra* note 15, and accompanying text.

[32] *See* Securities Exchange Act Release No. 84614 (November 16, 2018), 83 FR 59432 (November 23, 2018).

[33] *See* letters to Brent J. Fields, Secretary, Commission, from Lisa J. Fall, President, BOX, dated December 7, 2018, and Amir C. Tayrani, Gibson, Dunn & Crutcher LLP, dated December 10, 2018.

[34] *See* Securities Exchange Act Release No. 84823 (December 14, 2018), 83 FR 65381.

[35] *See id.*

[36] *See supra* note 18.

[37] *See* Order Instituting Proceedings, *supra* note 27.

[38] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[39] *Id.*

[40] 15 U.S.C. 78f(b)(4).

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78f(b)(8).

[43] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[44]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[45] and 19(b)(2)(B) of the Act[46] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[47] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,''[48]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to ''perfect the mechanism of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers,''[49] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].''[50]

As noted above, the proposal imposes new fees for physical connections to the Exchange. The Exchange states that these fees would partially offset costs associated with maintaining and enhancing this technology.[51] In the instant filing the Exchange states that its associated costs relate to costs paid to the Exchange's third-party data center and costs associated with projects and initiatives designed to improve overall network performance and stability.[52] The Exchange also states that these fees are expected to offset costs of maintaining and implementing ongoing improvements to BOX's trading systems, including connectivity costs, costs incurred on software and hardware enhancements, and resources dedicated to software development, quality assurance, and technology support.[53]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.''[54] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[55] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[56]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.[57]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by March 11, 2019. Rebuttal comments should be submitted by March 18, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[58]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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–2019–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2019–04. 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

[44] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[45] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[46] 15 U.S.C. 78s(b)(2)(B).

[47] 15 U.S.C. 78s(b)(2)(B).

[48] 15 U.S.C. 78f(b)(4).

[49] 15 U.S.C. 78f(b)(5).

[50] 15 U.S.C. 78f(b)(8).

[51] *See supra* Section II.A.1.

[52] *See id.*

[53] *See supra* Section II.A.2.

[54] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[55] *See id.*

[56] *See id.*

[57] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[58] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2019–04 and should be submitted on or before March 11, 2019. Rebuttal comments should be submitted by March 18, 2019.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[59] that File Number SR–BOX–2019–04 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03706 Filed 2–28–19; 8:45 am]

BILLING CODE 8011–01–P

[59] 15 U.S.C. 78s(b)(3)(C).

[60] 17 CFR 200.30–3(a)(12), (57), and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85187; File No. SR–ICEEU–2019–002]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

February 25, 2019.

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 February 15, 2019, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii) thereunder,[4] so that the proposal was immediately effective upon filing. 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] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to to [sic] add delivery terms relating to the ICE Futures Europe (''ICE Futures Europe'' or ''IFEU'') Permian West Texas Intermediate Crude Oil Storage Futures Contracts (the ''Contracts'').[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is amending its Delivery Procedures to add a new Section 10 and a new Part DD regarding delivery procedures relating to a new Contract that will be traded on ICE Futures Europe and cleared by ICE Clear Europe.

New Part DD sets out the delivery specifications and procedures for deliveries of storage capacity under the Contract. Delivery is effected by Magellan Crude Oil Pipeline Company, L.P. (''Magellan'') providing to the buyer a Capacity Allocation Contract (''CAC'')[6] for storage of one or more increments of 1,000 barrels of Permian West Texas Intermediate crude oil for a named calendar month at Magellan's East Houston terminal (''MEH''). The amendments also establish standards for the storage provided, as well as relevant procedures for exchange of futures for physical transactions under exchange rules.

Part DD addresses certain the responsibilities of the Clearing House and relevant parties for delivery under the Contracts, supplementing the existing provisions of the Rules. Specifically, neither the Clearing House nor ICE Futures Europe are responsible for the performance of Magellan or any person operating MEH, nor do they give any undertaking or warranty to any person as to the effect of the Contract Terms and Delivery Procedures as regards title to Permian WTI Storage. Further, neither the Clearing House nor ICE Futures Europe will have any liability for the condition of the Magellan storage system or for the performance by Magellan or any person who operates such system of any responsibilities they may assume towards Clearing Members or other persons pursuant to the Contract Terms, except for liability for fraud or bad faith or liability which cannot lawfully be excluded. Neither the Clearing House nor ICE Futures Europe has any obligation to any person to ensure the accuracy or availability of any information in Magellan's records in relation to storage rights arising from CACs in relation to Permian WTI Storage.

Part DD addresses delivery margin and invoicing with respect to the Contract and specifies certain details of the delivery process. Delivery of Contracts will be based on open contract positions at the close of trading on the last trading day for which physical delivery is specified. The procedures include a detailed timeframe for relevant notices of intent to deliver or receive, nominations of parties to delivery or receive, delivery confirmations, invoicing, release of delivery margin following completion of delivery and other matters.

New Section 10 addresses alternative delivery procedures (ADP) that the parties to a Contract may agree in lieu of the standard delivery arrangements in Part DD and relevant exchange rules. Section 10 addresses procedures for requesting such an alternative arrangement, disclosure of the counterparty (if amenable to an alternative arrangement), and confirmation and settlement of the alternative arrangement.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] Capitalized terms used but not defined herein have the meaning specified in the ICE Clear Europe Clearing Rules (the ''Rules'').

[6] This is a standardized agreement between Magellan and a buyer providing the contractual right to use designated Permian WTI Storage in the delivery month as further detailed in the Permian WTI Storage Contract.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments are designed to facilitate the clearing of a new physically settled crude oil storage futures contract that is being launched for trading by the ICE Futures Europe exchange. The amendments set out the obligations and roles of Clearing Members, the Clearing House and Magellan, the relevant storage facility for purposes of the Contracts. ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such products (and to address physical delivery under such contracts) and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments will be consistent with the prompt and accurate clearance and settlement of the Contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.[8] In ICE Clear Europe's view, the amendments will not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).[9]

In addition, Rule 17Ad–22(e)(10)[10] requires that each covered clearing agency establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries. As discussed above, the amendments to the Delivery Procedures to allow for the delivery and settlement under the Contracts, taken together with the Rules and ICE Futures Europe exchange contract terms, set out the obligations and roles of Clearing Members, the Clearing House and Magellan, the relevant storage facility for purposes of the Contracts. The amendments also adopt relevant procedures for such deliveries, which will facilitate identifying, monitoring and managing risks associated with delivery.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to update the Delivery Procedures in connection with the listing of the Contracts for trading on the ICE Futures Europe market. ICE Clear Europe believes that such contracts will provide opportunities for interested market participants to engage in trading activity in the Permian WTI storage market. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in Contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed amendments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and paragraph (f) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–ICEEU–2019–002 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–ICEEU–2019–002. 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* 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–ICEEU–2019–002 and should be submitted on or before March 22, 2019.

[7] 15 U.S.C. 78q–1(b)(3)(F).
[8] 15 U.S.C. 78q–1(b)(3)(F).
[9] 15 U.S.C. 78q–1(b)(3)(F).
[10] 17 CFR 240.17Ad–22(e)(10).
[11] 15 U.S.C. 78s(b)(3)(A).
[12] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03625 Filed 2–28–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85189; File No. 4–678]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving Proposed Amended Plan for the Allocation of Regulatory Responsibilities Among the Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC

February 25, 2019.

On December 20, 2018, Miami International Securities Exchange, LLC (''MIAX''), MIAX PEARL, LLC (''MIAX PEARL''), MIAX Emerald, LLC (''MIAX Emerald'') and the Financial Industry Regulatory Authority, Inc. (''FINRA'') (together, the ''Parties'') filed with the Securities and Exchange Commission (''Commission'') a plan for the allocation of regulatory responsibilities, dated December 19, 2018 (''Amended 17d–2 Plan'' or the ''Amended Plan''). The Amended Plan was published for comment on February 1, 2019.[1] The Commission received no comments on the Amended Plan. This order approves and declares effective the Amended Plan.

I. Introduction

Section 19(g)(1) of the Act,[2] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[3] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[4] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[5] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[6] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[7] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[8] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Amended Plan

On November 19, 2014, the Commission declared effective the Plan entered into between FINRA and MIAX for allocating regulatory responsibility pursuant to Rule 17d–2.[9] The Plan is intended to reduce regulatory duplication for firms that are common members of both MIAX and FINRA. The plan reduces regulatory duplication for firms that are members of MIAX and FINRA by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations. Included in the Amended Plan is an exhibit that lists every MIAX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to MIAX members that are also members of FINRA and the associated persons therewith (''Certification''). On February 6, 2017, the Commission approved a proposed amendment to the Plan to add MIAX PEARL as a Participant to the Plan.[10] On July 24, 2018, the Commission approved a proposed amendment to the Plan to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act, as well as certain provisions of Regulation SHO.[11] On December 20, 2018, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MIAX Emerald as a Participant to the Plan.

III. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act[12] and Rule 17d–2(c) thereunder[13] in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and

[13] 17 CFR 200.30–3(a)(12).

[1] *See* Securities Exchange Act Release No. 84997 (January 29, 2019), 84 FR 1252.

[2] 15 U.S.C. 78s(g)(1).

[3] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[4] 15 U.S.C. 78q(d)(1).

[5] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[6] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[7] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[8] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[9] *See* Securities Exchange Act Release No. 73641 (November 19, 2014), 79 FR 70230 (November 25, 2014).

[10] *See* Securities Exchange Act Release No. 79974 (February 6, 2017), 82 FR 10417 (February 10, 2017).

[11] *See* Securities Exchange Act Release No. 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018).

[12] 15 U.S.C. 78q(d).

[13] 17 CFR 240.17d–2(c).

fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for common members that would otherwise be performed by FINRA and at least one of MIAX, MIAX PEARL, or MIAX Emerald. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to common members. Furthermore, because MIAX, MIAX PEARL, MIAX Emerald and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, MIAX, MIAX PEARL, MIAX Emerald, and FINRA have allocated regulatory responsibility for those MIAX, MIAX PEARL, and MIAX Emerald rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a common member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The common rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the parties from time to time.

According to the Amended Plan, MIAX, MIAX PEARL, and MIAX Emerald will review the Certification at least annually, or more frequently if required by changes in either the rules of MIAX, MIAX PEARL, MIAX Emerald, or FINRA, and, if necessary, submit to FINRA an updated list of common rules to add MIAX, MIAX PEARL, or MIAX Emerald rules not included on the then-current list of common rules that are substantially similar to FINRA rules; delete MIAX, MIAX PEARL, or MIAX Emerald rules included in the then-current list of common rules that no longer qualify as common rules; and confirm that the remaining rules on the list of common rules continue to be MIAX, MIAX PEARL, or MIAX Emerald rules that qualify as common rules.[14] FINRA will then confirm in writing whether the rules listed in any updated list are common rules as defined in the Amended Plan. Under the Amended Plan, MIAX, MIAX PEARL, and MIAX Emerald also will provide FINRA with a current list of common members and shall update the list no less frequently than once each quarter.[15] The Commission believes that these provisions are designed to provide for continuing communication between the parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all MIAX, MIAX PEARL, and MIAX Emerald rules that are substantially similar to the rules of FINRA for common members of FINRA and MIAX, FINRA and MIAX PEARL, and FINRA and MIAX Emerald. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the parties are only adding to, deleting from, or confirming changes to MIAX, MIAX PEARL, or MIAX Emerald rules in the Certification in conformance with the definition of common rules provided in the Amended Plan. However, should the parties decide to add a MIAX, MIAX PEARL, or MIAX Emerald rule to the Certification that is not substantially similar to a FINRA rule; delete a MIAX, MIAX PEARL, or MIAX Emerald rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a MIAX, MIAX PEARL, or MIAX Emerald rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act.[16]

IV. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4–678. The parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4–678, between the FINRA, MIAX, MIAX PEARL, and MIAX Emerald, filed pursuant to Rule 17d-2 under the Act, hereby is approved and declared effective.

It is further ordered that MIAX, MIAX PEARL, and MIAX Emerald are each relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4–678.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03584 Filed 2–28–19; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* paragraph 2 of the Amended Plan.

[15] *See* paragraph 3 of the Amended Plan.

[16] The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, common members, also would constitute an amendment to the Amended Plan.

[17] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85190; File No. SR–NYSECHX–2019–02]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rules of the Exchange To Adopt Article 1, Rule 5

February 25, 2019.

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 February 21, 2019, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the rules of the Exchange (''Rules'') to adopt Article 1, Rule 5 related to designation of authority to act under the Rules. 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange and its direct parent, NYSE Chicago Holdings, Inc., were recently acquired by NYSE Group, Inc. (''NYSE Group''), which is an indirect wholly-owned subsidiary of the Intercontinental Exchange, Inc. (''ICE'').[4] As a result of its acquisition, the Exchange became part of a corporate family that now includes five separate registered national securities exchanges.[5] Following the acquisition, the Exchange has continued to operate as a separate self-regulatory organization and continues to have rules, membership rosters and listings distinct from the rules, membership rosters and listings of the other NYSE Group Exchanges.

As part of its ongoing post-acquisition transition, the Exchange is reviewing its Rules to identify potential rule changes that would enhance and streamline the administration of the Exchange. Pursuant to this review, the Exchange now proposes to adopt Article 1, Rule 5 (Designation of Authority) relating to the designation of authority to act under the Rules, which is substantively similar to the third paragraph of Rule 1 of the NYSE Rules (''NYSE Rule 1'').

Rule 5 would provide that the Chief Executive Officer (''CEO'') or the Chief Regulatory Officer (''CRO'') of the Exchange may formally designate one or more qualified employees of ICE to act in place of any person named in a Rule as having authority to act under such Rule in the event that the named person in the Rule is not available to administer that Rule. The proposal to specify that the designee may be a qualified employee of ICE is based on NYSE Rule 1. Proposed Rule 5 would further provide that, for the purposes of a designation by the CEO, a qualified employee is: (1) Any officer of ICE that the CEO deems to possess the requisite knowledge and job qualifications to administer that Rule; or (2) any employee of the Exchange[6] that the CEO and the Board of Directors deem to possess the requisite knowledge and job qualifications to administer that Rule, and that, for the purpose of a designation by the CRO, a qualified employee is: (1) Any ICE officer that the CRO deems to possess the requisite knowledge and job qualifications to administer that Rule; or (2) any Exchange employee that the CRO and the Exchange's Regulatory Oversight Committee deem to possess the requisite knowledge and job qualifications to administer that Rule.

The Exchange has implemented policies and procedures to formally identify the officers and employees who have been delegated authority to administer a particular Rule on behalf of any named person identified in that Rule. The Exchange considers the delegation of authority to be a corporate function; accordingly, such formal delegation is subject to approval by the CEO, CRO and Boards of Directors or Regulatory Oversight Committee of the Exchange, as applicable, as well as compliance with all applicable bylaws of the Exchange. These delegations of authority are centrally maintained and periodically updated by the Office of the General Counsel to remain current with final approval by the CEO or CRO, as applicable.

The Exchange does not currently maintain a Rule similar to proposed Article 1, Rule 5. Rather, certain Rules explicitly permit the Exchange officer to designate other individual(s) with authority granted to the officer under the relevant Rule.[7]

The proposed rule change is immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder. In addition, the Exchange is requesting a waiver of the 30-day operative delay to permit the proposed rule change to become operative upon filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[10] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, proposed Article 1, Rule 5 would remove impediments to and perfect the mechanisms of a free and open market and a national market system because it clarifies that certain agents of the Exchange may act on behalf of the Exchange with respect to the administration of the Rules and permits the CEO, CRO, and Boards of Directors or Regulatory Oversight Committee of the Exchange, as applicable, to formally designate one or more qualified employees of the Exchange to act in place of any person named in a Rule within guidelines that are identical to NYSE Rule 1. Therefore, the Exchange believes the proposed rule change fosters uniformity and consistency between the Exchange and NYSE and, as a result, would facilitate Exchange compliance with, and enforcement of, the Rule, which protects investors and the public interest.

The Exchange further believes that the proposed rule would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for continuity if either the CEO or CRO is unavailable to act under a Rule. Having pre-authorized delegations would allow for uninterrupted Exchange services that rely on either the CEO or CRO acting under a Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with

[4] *See* Exchange Act Release No. 83635 (July 13, 2018), 83 FR 34182 (July 19, 2018) (SR–CHX–2018–004); *see also* Exchange Act Release No. 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR–CHX–2018–004).

[5] The Exchange has four registered national securities exchange affiliates: New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), NYSE National and NYSE American LLC (''NYSE American'' and together with the Exchange, NYSE, NYSE Arca, and NYSE National, the ''NYSE Group Exchanges'').

[6] The terms ''employee of the Exchange'' and ''Exchange employee'' refer to an individual responsible for certain Exchange operations who may also be responsible for certain operations of one or more of the other NYSE Group Exchanges and/or affiliated entities.

[7] *See e.g.,* Article 20, Rule 10(b) of the Rules.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78f(b)(5).

facilitating Exchange compliance with, and enforcement of, its rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] 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. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would permit the Exchange's CEO and CRO to immediately designate authority under the Rule to other ICE officers and Exchange employees, which would serve to accelerate the post-acquisition transition process and therefore expedite the Exchange's integration into the NYSE Group family of exchanges. The Exchange notes that this filing is identical to NYSE Rule 1. For this reason, the Commission believes that waiver of 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.[15]

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) [16] 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–NYSECHX–2019–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2019–02. 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–NYSECHX–2019–02 and should be submitted on or before March 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03631 Filed 2–28–19; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85186; File No. SR–NYSE–2019–06]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enhance the Content of the NYSE Trades Market Data Product Offering

February 25, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 13, 2019, New York Stock Exchange LLC (''NYSE'' or 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enhance the content of the NYSE Trades market data product offering. The Exchange does not proposes [sic] to amend the fees related to NYSE Trades. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance the content of the NYSE Trades market data feed product offering. The Exchange does not propose to amend the fees for the NYSE Trades feed.

NYSE Trades is an NYSE-only last-sale market data feed. NYSE Trades currently allows vendors, broker-dealers and others to make available on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan and the UTP Plan for inclusion in the their respective consolidated data streams. Specifically, the NYSE Trades feed includes, for each security traded on the Exchange, the real-time last sale price, time and size information and a stock summary message. The stock summary message updates every minute and includes NYSE's opening price, high price, low price, closing price, and cumulative volume for the security.[4]

The Exchange proposes to enhance the content of the NYSE Trades feed by including information for trades reported to the FINRA/NYSE Trade Reporting Facility (''TRF''). The FINRA/NYSE TRF data disseminated via the NYSE Trades feed would include the same real-time last sale price, time and size information for each trade reported to the FINRA/NYSE TRF that the FINRA/NYSE TRF reports under the CTA Plan and UTP Plan for inclusion in their respective consolidated data streams.[5] The FINRA/NYSE TRF data would also identify whether the trade was reported to the TRF on a T+1 basis. Unlike for securities traded on the Exchange, the FINRA/NYSE TRF data would not include a stock summary message, which relates to exchange-specific activity only. FINRA/NYSE TRF trades would clearly be denoted as such in the NYSE Trades feed to ensure that they are not mistaken for trades executed on the Exchange.

With this proposed rule change, FINRA/NYSE TRF data disseminated via the NYSE Trades feed would also be included as part of the NYSE BQT data feed.[6] The NYSE BQT data feed provides a unified view of best bid and offer (''BBO'') and last sale information for the Exchange and its affiliates, NYSE Arca, Inc. (''NYSE Arca''), NYSE National, Inc. (''NYSE National''), and NYSE American LLC (''NYSE American'') and consists of data elements from eight existing market data feeds: NYSE Trades, NYSE BBO,[7] NYSE Arca Trades,[8] NYSE Arca BBO,[9] NYSE National BBO,[10] NYSE National Trades,[11] NYSE American Trades [12] and NYSE American BBO.[13] The NYSE BQT data feed would, therefore, include the FINRA/NYSE TRF data as part of the data it receives via the NYSE Trades market data feed. The Exchange does not propose to amend the fees for the NYSE BQT data feed.

The Exchange proposes to implement the proposed rule change on April 29, 2019.[14]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [15] of the Act, in general, and furthers the objectives of Section 6(b)(5) [16] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange believes the proposal would facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system by providing market participants an additional means to access information about transactions reported to the FINRA/NYSE TRF. The proposal would improve the content included in the NYSE Trades feed and provide investors with an additional option for accessing information that may help to inform their trading decisions. The inclusion of FINRA/NYSE TRF data in the NYSE Trades feed is also consistent with the content of at least two data feeds offered by the NASDAQ Stock Market LLC (''NASDAQ''), both of which similarly include last sale information for trades reported to the FINRA/NASDAQ TRF.[17]

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the

[4] *See* Securities Exchange Act Release Nos. 59309 (January 28, 2009), 74 FR 6073 (February 4, 2009) (SR–NYSE–2009–04), 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR–NYSE–2013–23), 70066 (July 30, 2013), 78 FR 47474 (August 5, 2013) (SR–NYSE–2013–53), and 76599 (December 9, 2015), 80 FR 77676 (December 15, 2015) (SR–NYSE–2015–65).

[5] The Exchange would make FINRA/NYSE TRF data available through its NYSE Trades Feed no earlier than it makes that information available to the responsible securities information processor.

[6] *See* Securities Exchange Act Release Nos. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR–NYSE–2014–40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Establish the NYSE Best Quote and Trades Data Feed); and 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (SR–NYSE–2018–22).

[7] *See* Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30).

[8] *See* Securities Exchange Act Release Nos. 59289 (Jan. 23, 2009), 74 FR 5711 (Jan. 30, 2009) (SR–NYSEArca–2009–06); and 59598 (Mar. 18, 2009), 74 FR 12919 (Mar. 25, 2009) (SR–NYSEArca–2009–05).

[9] *See* Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23).

[10] *See* Securities Exchange Act Release No. 83350 (May 31, 2018), 83 FR 26335 (June 6, 2018) (SR–NYSENat–2018–09).

[11] *Id.*

[12] *See* Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35).

[13] *See* Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35).

[14] The implementation of this proposed rule change is contingent on FINRA filing a proposed rule change with the Commission to amend its rules to account for the dissemination of FINRA/NYSE TRF data via the NYSE Trades and BQT data feeds.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* NASDAQ Rule 7047(a)(1) (stating that NASDAQ Basic ''shall contain NASDAQ's best bid and offer and last sale for NASDAQ-listed stocks from NASDAQ and the FINRA/NASDAQ TRF''). *See also* NASDAQ Rule 7039(a) (stating that ''NASDAQ Last Sale comprises two proprietary data feeds containing real-time last sale Information for trades executed on NASDAQ or reported to the FINRA/NASDAQ Trade Reporting Facility'').

provision of market data. The Exchange believes that the data product modification proposed herein, the inclusion of trades reported to the FINRA/NYSE TRF, is precisely the sort of market data product enhancement that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[18]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

The Exchange further notes that the existence of alternatives to the Exchange's products, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, such as from NASDAQ,[19] ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives.

Lastly, the proposal would not permit unfair discrimination because the enhanced product would be available to all of the Exchange's vendors and customers on an equivalent basis with no change in price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposal would enhance competition by enabling the Exchange to better compete with NASDAQ, which offers similar products that include data for trades reported to the FINRA/NASDAQ TRF.[20]

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22] 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)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–06. 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

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[19] *See supra* note 17.

[20] *Id.*

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] 15 U.S.C. 78s(b)(2)(B).

submissions should refer to File Number SR–NYSE–2019–06 and should be submitted on or before March 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03624 Filed 2–28–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85191; File No. SR–C2–2018–022]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Order Approving a Proposed Rule Change To Provide for the Trading of Complex Reserve Orders

February 25, 2019.

I. Introduction

On November 8, 2018, Cboe C2 Exchange, Inc. (''C2'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the trading of Complex Reserve Orders. The proposed rule change was published for comment in the **Federal Register** on November 27, 2018.[3] On December 19, 2018, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] The Commission has received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

As described more fully in the Notice,[5] C2 proposes to amend its rules to provide for the trading of Complex Reserve Orders. C2 notes that it currently offers Reserve Order functionality for simple orders.[6] C2 states that Reserve Orders provide Users with additional flexibility to manage and display their orders and additional control over their executions on C2.[7]

A Complex Reserve Order is a complex limit order with both a portion of the quantity displayed (''Display Quantity'') and a reserve portion of the quantity (''Reserve Quantity'') not displayed.[8] Both the Display Quantity and Reserve Quantity of the Complex Reserve Order are available for potential execution pursuant to C2 Rules 6.13(c)–(e).[9] Displayed complex orders resting on the Complex Order Book (''COB'') have priority over non-displayed portions of Complex Reserve Orders resting on the COB.[10] When entering a Complex Reserve Order, a User must instruct the Exchange as to the quantity of the Complex Reserve Order to be initially displayed by C2's System (''Max Floor'').[11] If the Display Quantity of a Complex Reserve Order is fully executed, the System will replenish the display quantity in accordance with the User's instruction.[12] If the remainder of a Complex Reserve Order is less than the replenishment amount, the System will display the entire remainder of the Complex Reserve Order.[13] The System creates a new timestamp for both the Display Quantity and Reserve Quantity of the Complex Reserve Order each time it is replenished from reserve.[14]

The proposal addresses the participation of Complex Reserve Orders in the Complex Order Auction (''COA''). If a COA-eligible order is a Complex Reserve Order, the COA auction message will identify only the Display Quantity, although the entire quantity of the order (both the Display Quantity and Reserve Quantity) may execute following the COA pursuant to C2 Rule 6.13(d)(5).[15] COA Responses may be larger than the COA-eligible order.[16] The System caps the size of aggregated COA Responses for an Executing Firm ID (''EFID'') at the size of the COA-eligible order (including Display Quantity and Reserve Quantity) if the COA-eligible order is a Complex Reserve Order).[17] At the conclusion of the COA, the System executes the COA-eligible order against contra side interest in price priority.[18] At the same price, the COA-eligible order will execute first against orders and quotes in the Simple Book (both displayed and non-displayed orders) for the individual leg components of the complex order, and then against COA Responses and unrelated orders posted to the COB.[19] A do-not-COA order [20] or an order resting on the COB that is eligible for execution will execute against contra side interest at the same price by trading with orders and quotes in the Simple Book (both displayed and non-displayed orders) for the individual leg components of the complex order before executing against complex orders resting on the COB at that price.[21]

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84643 (November 21, 2018), 83 FR 60916 (''Notice''). In addition to the changes described herein, the proposal makes non-substantive changes to revise the heading of C2 Rule 6.13(g) and to add headings to C2 Rule 6.13(h)(1) and (2). *See id.* at nn. 10 and 13.

[4] *See* Securities Exchange Act Release No. 84867, 83 FR 66811 (December 27, 2018). The Commission designated February 25, 2019, as the date by which the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

[5] *See* note 3, *supra.*

[6] *See* Notice, 83 FR at 60917, and C2 Rule 6.10.

[7] *See* Notice, 83 FR at 60917–8.

[8] *See* proposed C2 Rule 6.13(b)(6).

[9] *See id.* Pursuant to C2 Rules 6.13(c)–(e), complex orders (including the Display and Reserve Quantities of Complex Reserve Orders) may execute during the Complex Order Book opening process, against incoming complex orders, against simple orders in the Simple Book (via Legging), or following a Complex Order Auction. Complex Reserve Orders will be COA-eligible, subject to a User's instructions. *See* Notice, 83 FR at n.5.

[10] *See* proposed C2 Rule 6.13(h)(4). The COB is the Exchange's electronic book of complex orders. *See* C2 Rule 6.13

[11] *See* proposed C2 Rule 6.13(b)(6). The System is the automated trading system the Exchange uses for the trading of option contracts. *See* C2 Rule 100.

[12] The proposed rule provides two replenishment instructions. Under the Random Replenishment instruction, the System randomly replenishes the Display Quantity for the Complex Reserve Order with a number of contracts not outside a replenishment range, which equals the Max Floor plus and minus a replenishment value established by the User when entering a Complex Reserve Order with a Random Replenishment instruction. For any Complex Reserve Order for which a User does not select Random Replenishment, the System will replenish the Display Quantity of the Complex Reserve Order with the number of contracts equal to the Max Floor (or the entire remainder of the Complex Reserve Order if it is less than the replenishment amount). *See* proposed C2 Rule 6.13(b)(6).

[13] *See id.*

[14] *See id.*

[15] *See* proposed C2 Rule 6.13(d)(1). C2 Rule 6.13(b)(2) states that buy (sell) complex orders with User instructions to (or which default to) initiate a COA that are priced higher (lower) than the SBB (SBO) and higher (lower) than the price of complex orders resting at the top of the COB are ''COA-eligible orders,'' while buy (sell) complex orders with User instructions not to (or which default to not) initiate a COA, that are marked Post Only, or that are priced equal to or lower (higher) than the SBB (SBO) or equal to or lower (higher) than the price of complex orders resting at the top of the COB are ''do-not-COA orders.''

[16] *See* proposed C2 Rule 6.13(d)(4)(B).

[17] *See id.*

[18] *See* proposed C2 Rule 6.13(d)(5).

[19] *See* proposed C2 Rule 6.13(d)(5)(A). The Simple Book is the electronic book of simple orders and quotes maintained by the System. *See* C2 Rule 100.

[20] *See* note 15, *supra.*

[21] *See* proposed C2 Rule 6.13(e)(1). The entire quantity of a Complex Reserve Order (both the Display Quantity and Reserve Quantity) Legs into the Simple Book at the same time, and any quantity

Continued

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act,[22] and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[24] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that Complex Reserve Orders could provide market participants with greater flexibility and control over the trading of their complex orders and could allow them to provide additional liquidity to the market. The Commission notes that C2 currently offers Reserve Order functionality for simple orders.[25] Under the proposal, displayed complex orders resting on the COB will have priority over the non-displayed portions of Complex Reserve Orders resting on the COB.[26] As described above, the proposal further provides that complex orders will execute against displayed and non-displayed leg market interest before executing against complex order interest at the same price.[27] The Commission notes that complex orders on C2 currently execute against leg market interest (displayed first and then non-displayed) before executing against complex order interest.[28] While displayed interest ordinarily executes before non-displayed interest at the same price to encourage market participants to submit displayed interest, the Commission believes that executing non-displayed leg market interest before complex interest at the same price should facilitate interaction between the single leg and complex markets and provide all single leg interest at a given price, displayed and non-displayed, with an opportunity to participate in executions with complex orders.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–C2–2018–022) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03632 Filed 2–28–19; 8:45 am]

BILLING CODE 8011–01–P

that does not execute pursuant to C2 Rule 6.13(d) or (e) after Legging will rest in the COB in accordance with the Complex Reserve Order instruction. *See* proposed C2 Rule 6.13(g)(5).

[22] 15 U.S.C. 78f.

[23] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] *See* note 6, *supra.*

[26] *See* proposed C2 Rule 6.13(h)(4).

[27] *See* proposed C2 Rules 6.13(d)(5)(A)(i) and (e)(1) and notes 19–21, *supra,* and accompanying text.

[28] *See* C2 Rules 6.13(d)(5)(A) and (e).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15874 and #15875; Mississippi Disaster Number MS–00109]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4415–DR), dated 02/14/2019.

Incident: Severe Storms, Flooding, and Tornado.

Incident Period: 12/27/2018 through 12/28/2018.

DATES: Issued on 02/14/2019.

Physical Loan Application Deadline Date: 04/15/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 11/14/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/14/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clarke, Covington, Forrest, Greene, Jasper, Jones, Marion, Newton, Perry, Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 158746 and for economic injury is 158750.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–03648 Filed 2–28–19; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10689]

Notice of Determinations: Culturally Significant Objects Imported for Exhibition—Determinations: ''Early Rubens'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Early Rubens,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, Legion of Honor Museum, San Francisco, California, from on or about April 6, 2019, until on or about September 8, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State,

L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–03780 Filed 2–28–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10580]

30-Day Notice of Proposed Information Collection: Request for Department of State Personal Identification Card

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to April 1, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to John Ferguson, who may be reached on 202–647–3854 or at *FergusonJM3@State.Gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Department of State Personal Identification Card.
- *OMB Control Number:* None.
- *Type of Request:* Existing Collection without OMB Control Number.
- *Originating Office:* Office of Domestic Facilities Protection (DS/DO/DFP).
- *Form Number:* DS–1838 and DS–7783.
- *Respondents:* Non-employees who need Personal Identification Cards.
- *Estimated Number of Respondents:* 13,500.
- *Estimated Number of Responses:* 13,500.
- *Average Time per Response:* 5 minutes.
- *Total Estimated Burden Time:* 1,125 annual hours.
- *Frequency:* On occasion (when new badge is required or badge expires).
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The collection of the information requested on the DS–1838 and DS–7783 is necessary for all Department non-employees who need a PIV. They are required to submit an application for a Personal Identification Card (DS–1838 domestically or DS–7783 overseas) at the time of hire. The information collected on the form is necessary to verify personal identity as required by the Federal Information Processing Standard Publication 201 (FIPS 201) and Homeland Security Presidential Directive 12 (HSPD 12). Employees must also use these forms, but the Paperwork Reduction Act does not apply to them; therefore, their numbers are not counted in this request.

Methodology

Information is collected by a form or automated badge request (ABR) online.

Timothy Thomas,

Division Chief, Office of Domestic Facilities Protection, Bureau of Diplomatic Security, Department of State.

[FR Doc. 2019–03699 Filed 2–28–19; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA 2019–0135]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Changes in Permissible Stage 2 Airplane Operations

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 information used to issue special flight authorizations for non-revenue transports and non-transport jet operations of Stage 2 airplanes at U.S. airports. Only a minimal amount of data is requested to identify the affected parties and determine whether the purpose for the flight is one of those enumerated by law. This collection is required under the Airport Noise and Capacity Act of 1990 (as amended by Pub. L. 106–113) and the FAA Modernization and Reform Act of 2012.

DATES: Written comments should be submitted by April 30, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandy Liu, 800 Independence Ave. SW, Washington, DC 20591, Attn: AEE–100.

By fax: 202–267–5594.

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: Sandy Liu by email at: *sandy.liu@faa.gov;* phone: 202–267–4748

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0652.

Title: Changes in Permissible Stage 2 Airplane Operations.

Form Numbers: FAA Form 1050–8.

Type of Review: Renewal of an information collection.

Background

This collection is required under the Airport Noise and Capacity Act of 1990 (as amended by Pub. L. 106–113) and the FAA Modernization and Reform Act of 2012. This information is used by the FAA to issue special flight authorizations for nonrevenue operations of transports and nontransport jet Stage 2 airplanes at U.S. airports. Only minimal amount of data is requested to identify the affected parties and determine whether the purpose for the flight is one of the ones enumerated in the law.

Respondents: Approximately 30 applicants.

Frequency: Information is collected occasionally when services enumerated for a Stage 2 airplane are requested within the United States.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 7.5 hours.

Issued in Washington, DC on March 26, 2019.

Sandy Liu,

Engineer, Noise Division, Office of Environment and Energy, Noise Division, AEE–100.

[FR Doc. 2019–03665 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on a Land Use Change From Aeronautical to Non-Aeronautical Use for 52.41 Acres of Airport Land for Existing Business Park Use at Martha's Vineyard Airport, West Tisbury, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from Martha's Vineyard Airport to change the current land use from aeronautical use to non-aeronautical use of a 52.41-acre parcel of land. The parcel is located in the Southeastern quadrant of the airport and is currently used for the Airport Business Park. The development does not impact existing aviation land needs nor impacts future aviation land needs of the airport per their most current Airport Layout Plan. The airport obtains fair market value for the lease of the land and is deposited in the airports operations and maintenance account.

DATES: Comments must be received on or before April 1, 2019

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 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.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803. Telephone: 781–238–7618.

Issued in Burlington, Massachusetts, on November 20, 2017.

Gail B. Lattrell,

Director (Acting), ANE–600.

[FR Doc. 2019–03619 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.

ACTION: Notice of limitation on claims for Judicial Review of Actions by TxDOT and federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried-out by TxDOT pursuant to a Memorandum of Understanding dated December 16, 2014, and executed by FHWA and TxDOT. The actions relate to various proposed highway projects in the State of Texas. These actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the highway project will be barred unless the claim is filed on or before July 29, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Carlos Swonke, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2734; email: *carlos.swonke@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) issued in connection with the projects and in other key project documents. The CE, EA, or EIS and other key documents for the listed projects are available by contacting TxDOT at the address provided above.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine

Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

The projects subject to this notice are:

1. Bicentennial Boulevard Extension Project from SH 107 to Trenton Road, Hidalgo County, Texas. The proposed project would extend Bicentennial Boulevard from SH 107 to Trenton Road as a new location, four-lane facility. The length of the proposed project is approximately 2.86 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment approved on October 25, 2018, the Finding of No Significant Impact was issued on December 19, 2018, and other documents in the TxDOT project file. The EA and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Pharr District Office at 600 W US Expressway 83, Pharr, Texas 78577; telephone (956) 702–6102.

2. State Loop (SL) 336 South from Interstate Highway (IH) 45 to Farm to Market Road (FM) 1314 in Montgomery County, Texas. The proposed project would create a divided 4-lane facility by constructing a 2-lane roadway to the south of existing SL 336. The new lanes would serve as the east bound lanes, with the existing lanes being converted to serve west bound traffic. The project length is approximately 2.5 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on September 28, 2018 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office located at 7600 Washington Avenue, Houston, Texas 77007; telephone (713) 802–5076.

3. Farm to Market Road (FM) 1488, Magnolia Relief Route, from existing FM 1488 west of Magnolia to proposed State Highway (SH) 249 east of Magnolia in Montgomery County, Texas. The proposed action would construct an east-west facility on new location to serve as a major arterial for the distribution of traffic around the city of Magnolia. This facility would consist of a four-lane divided facility. The project length is approximately 5.4 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on October 23, 2018, the Finding of No Significant Impact (FONSI) issued on October 25, 2018, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office located at 7600 Washington Avenue, Houston, Texas 77007; telephone (713) 802–5076.

4. I–35 from the Guadalupe River to FM 1103, Comal County, Texas. The project includes operational improvements to the I–35 interchanges with FM 1103/Hubertus Road, Schwab Road, Engel Road, Solms Road, Loop 337/Rueckle Road, Business 35/Schmidt Avenue, Walnut Avenue, and FM 725. Improvements would include intersection improvements, ramp reconfigurations and the addition of auxiliary lanes along the I–35 mainlanes and frontage road reconstruction. The project is approximately 9.25 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on November 20, 2018. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone (210) 615–5839.

5. State Loop 1604 from IH 10 East to FM 1346 (Houston Street), Bexar County, Texas. The project would widen the existing 2-lane undivided roadway to a 4-lane divided roadway. The project is approximately 3.9 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on November 30, 2018, and other documents in the TxDOT project file. The Categorical Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone (210) 615–5839.

6. SH 46 from Farhills Drive to FM 3159, Comal County, Texas. The project would widen the roadway from its existing two-lane highway to two different configurations. The curbed with storm drain configuration, constructed in the more developed areas, would consist of six 11-foot travel lanes with a 16-foot raised median. The other configuration, a curbed with grasslined open-ditch configuration, would be constructed in less developed areas and would consist of six 11-foot travel lanes with a 16-foot raised median. The project is approximately 6 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on October 26, 2018, Finding of No Significant Impact (FONSI) issued on October 26, 2018, and other documents in the TxDOT project file. The EA, FONSI and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone (210) 615–5839.

7. US 290/SH 71 West from State Loop 1 (MoPac) to west of RM 1826 and US 290 to Silvermine Drive, Travis County, Texas. The project, known as the Oak Hill Parkway (OHP) project, proposes improvements that include direct connectors at the intersection of US 290 and SH 71, controlled access along both highways in Oak Hill with frontage roads, and an overpass for US 290 at William Cannon Drive. New construction on roadway improvements would begin just east of Joe Tanner Lane where the existing mainlanes transition to an urban highway. The mainlanes would be elevated over William Cannon Drive, and the westbound mainlanes and frontage road would be located north of Williamson Creek. The mainlanes would be depressed under SH 71 and direct connectors would be provided, connecting eastbound SH 71 with US 290, and westbound US 290 to SH 71. Mainlanes would vary from four near William Cannon Drive to two near the western project limit. Grade-separated intersections would be constructed at Convict Hill Road, RM 1826, Scenic Brook Drive, and Circle Drive (Southview Road). Along SH 71, the direct connector ramps would extend past Scenic Brook Drive where the mainlanes would then transition to a five-lane (three lanes northbound, two lanes southbound) rural highway. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Impact Statement (FEIS) approved on December 21, 2018 and Record of Decision (ROD) issued on December 21, 2018, and other documents in the TxDOT project file. The FEIS, ROD and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone (512) 832–7000. The EIS and ROD can also be viewed and

downloaded from the following website: *www.oakhillparkway.com.*

8. SH 78 at Gaston Avenue in Dallas County, Texas. The proposed project would reconfigure the intersection of SH 78 (East Grand Avenue/Garland Road) at Gaston Avenue in the City of Dallas, Dallas County, Texas. The proposed facility would be reconfigured as a fully signalized, reverse T-intersection with East Grand Avenue intersecting Gaston Avenue and Garland Road. The length of the proposed project is approximately 0.76 miles. The purpose of the proposed project is to improve traffic operations and mobility, as well as to improve safety and to provide improved bicycle and pedestrian accommodations. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Categorical Exclusion Determination issued on December 21, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT file are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320–4480.

9. SH 158 at SH 137 in Glasscock County, Texas. The proposed project would construct an overpass on SH 158 over SH 137. The purpose of the project is to allow for traffic to move through the intersection with less congestion. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on September 4, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Angelo District Office at 4502 Knickerbocker Road, San Angelo, Texas, 76904; telephone (325) 947–9266.

10. IH 10 from FM 3538 to FM 2761 in Colorado and Austin Counties, Texas. The proposed project would add an additional main lane in each direction along IH 10. The proposed project would also convert existing two way frontage roads to one way frontage roads. The purpose of the project is to improve mobility and increase safety along this section of I–10. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on November 8, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Yoakum District Office at 403 Huck St., Yoakum, TX 77995; telephone (361) 293–4436.

11. SL 121 from FM 439 to I–35 in Bell County, Texas. The proposed project would widen SL 121 from 2 to 4 lane divided roadway with bike/pedestrian improvements. The proposed project is needed to improve traffic safety, alleviate congestion, improve access management, and to provide pedestrian/bicycle accommodations. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on December 12, 2018 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Waco District Office at 100 S Loop Dr., Waco, TX 76704; telephone (254) 867–2705.

12. SH6/SL340 from US 84 to IH 35 in McLennan County, Texas. The proposed project would construct continuous frontage roads and four overpasses. The proposed project length is 2.68 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued December 14, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Waco District Office at 100 S Loop Dr., Waco, TX 76704; telephone (254) 867–2705.

13. Loop 338 Overpass at East Yukon Rd, Ector County, Texas. The proposed improvements would include the construction of an overpass on SL 338 at the intersection of E. Yukon Rd. The project would be approximately 2.0 miles in length. The project would help improve mobility on Loop 338. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on September 7, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Odessa District Office at 3901 East Highway 80, Odessa, Texas 79761; telephone (432) 498–4746.

14. Loop 250 at CR 1150 and CR 60, Midland County, Texas. The proposed project consists of extending main lanes and constructing access ramps and two overpasses between the existing frontage roads, on SL 250 from 0.5 miles west of County Road (CR) 1150 to 0.5 miles east of CR 60. The project would be approximately 1.0 mile in length. The project would help improve mobility on Loop 250 at the intersections of CR 1150 and CR 60. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on September 19, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Odessa District Office at 3901 East Highway 80, Odessa, Texas 79761, (432) 498–4746.

Authority: 23 U.S.C. 139(l)(1).

Issued on February 19, 2019.

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2019–03251 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0026]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DEJA VU (48' Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0026 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0026 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0026, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information

provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DEJA VU is:

—*Intended Commercial Use of Vessel:* ''Owner intends to use vessel for high end full service, short voyage charter, including but not limited to sunset sails, gatherings and special events.''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: San Diego, CA)

—*Vessel Length and Type:* 48′ Sailboat

The complete application is available for review identified in the DOT docket as MARAD–2019–2026 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0026 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03603 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0019]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel FRENCH MAID (51′ Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0019 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0019 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0019, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453,

Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FRENCH MAID is:

—*Intended Commercial Use of Vessel:* ''Continue to Charter and Use for Sailing School. Bare boat charters of up to 8 pax.''

—*Geographic Region Including Base of Operations:* ''Virginia, Maryland, Delaware, North Carolina, South Carolina, Georgia, Florida, New Jersey, New York (excluding New York Harbor), Connecticut, Rhode Island, Massachusetts, Maine'' (Base of Operations: Mathews, VA)

—*Vessel Length and Type:* 51′ sailboat

The complete application is available for review identified in the DOT docket as MARAD–2019–0019 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0019 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121).

* * * * *

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03605 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0027]

Request for Comments on the Renewal of a Previously Approved Information Collection: Ocean Shipments Moving Under Export-Import Bank Financing

AGENCY: Maritime Administration, DOT

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. This collection of information is necessary for MARAD to fulfill its legislative requirement to monitor the percentage of ocean freight revenues/tonnage.

A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on October 25, 2018 (**Federal Register** 53953, Vol. 83, No. 207).

DATES: Comments must be submitted on or before April 1, 2019.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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: Jan Downing, 202–366–0783, Office of Cargo and Commercial Sealift, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W23–308, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Monthly Report of Ocean Shipments Moving Under Export-Import Bank Financing.

OMB Control Number: 2133–0013.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The information collection will be used by MARAD to monitor compliance with the cargo preference laws by parties covered under PR 17 and 46 CFR part 381. In addition, MARAD will use the information to compile annual information on Export-Import Bank-financed shipments, and when applicable, to provide for an informal grievance procedure, in the

event there is a question or complaint pertaining to cargo preference matters.

The monthly shipping reports, with substantiating documents, will provide the only basis for MARAD to exercise its legislative responsibility to monitor Export-Import Bank-financed cargoes that are transported on U.S.-flag vessels, recipient flag vessels and on third-flag vessels according to the determinations and certifications of vessel non-availability that have been granted. The compilation of the statistics from the shipping reports forms the basis for determining compliance with PR 17 for each loan participant. This information is also provided to the Export-Import Bank, and is the nucleus for conducting annual reviews of the shipping activities of the Export-Import Bank programs.

MARAD uses the information collected as part of the Transparency Initiative to share with the Export-Import Bank. MARAD also intends to use the information to assist Ex-Im Bank shippers with finding suitable U.S.-flag vessels and in support of the determinations MARAD makes with respect to requests from Export-Import Bank shippers for certifications of non-availability.

Respondents: All Export-Import Bank loan and certain loan guarantee recipients and designated representatives charged with the responsibility of monthly and annual reporting. These can be a contractor, ocean transportation intermediary, supplier, etc.

Affected Public: Business and/or other for Profit.

Estimated Number of Respondents: 28.

Estimated Number of Responses: 364.

Estimated Hours per Response: 1.5.

Annual Estimated Total Annual Burden Hours: 196.

Frequency of Response: Monthly.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: February 26, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03692 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0013]

Request for Comments on the Renewal of a Previously Approved Information Collection: Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen-Owned Documented Vessels

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will enable MARAD to determine whether the vessel proposed for transfer will initially require retention under the U.S.-flag statutory regulations.

We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before April 30, 2019.

ADDRESSES: You may submit comments [identified by Docket No. MARAD–2019–0013] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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: Deveeda Midgette, (202) 366–2354, Office of Sealift Support, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W23–631, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen-Owned Documented.

OMB Control Number: 2133–0006.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: This collection provides information necessary for MARAD to approve the sale, transfer, charter, lease, or mortgage of U.S. documented vessels to non-citizens; or the transfer of such vessels to foreign registry and flag; or the transfer of foreign flag vessels by their owners as required by various contractual requirements.

Respondents: Respondents are vessel owners who have applied for foreign transfer of U.S.-flag vessels.

Affected Public: Business or other for Profit.

Estimated Number of Respondents: 85.

Estimated Number of Responses: 85.

Estimated Hours per Response: 2.

Annual Estimated Total Annual Burden Hours: 170.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: February 26, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03694 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0020]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SIRENA (55′ Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0020 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0020 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0020, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled *Public Participation.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SIRENA is:

—*Intended Commercial Use of Vessel:* ''Time and Trip time commercial charters''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Connecticut, New York (excluding New York Harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida.'' (Base of Operations: North Charleston, SC)

—*Vessel Length and Type:* 55′ sailboat

The complete application is available for review identified in the DOT docket as MARAD–2019–0020 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0020 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 * * *.

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03610 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Highway Project Designation Open Season General Information Announcement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of open season for Marine Highway Project Designations.

SUMMARY: The U.S. Department of Transportation (DOT) and Maritime Administration (MARAD) announce that the open season for Marine Highway Project Designation submissions is being extended to January 31, 2022 (Open Season). The purpose of this notice is to extend the invitation to interested parties to submit Marine Highway Project Designation applications to DOT for review and consideration.

DATES: There will be six additional project review sessions during the extended Marine Highway Project Designation Open Season. Table 1 contains the application due dates and review periods for each review session. Qualified projects will be announced shortly after the completion of each review session. Applications can also be submitted at any time.

TABLE 1—OPEN SEASON PROJECT DESIGNATION SUBMISSION AND REVIEW TIMELINE

Review session	Project application due date (11:59 p.m. Pacific)	Project review period
1	July 31, 2019	August 1, 2019–November 30, 2019.
2	January 31, 2020	February 1, 2020–May 31, 2020.
3	July 31, 2020	August 1, 2020–November 30, 2020.
4	January 31, 2021	February 1, 2021–May 31, 2021.
5	July 31, 2021	August 1, 2021–November 30, 2021.
6	January 31, 2022	February 1, 2022–May 31, 2022.

ADDRESSES: Submit applications to Fred Jones, Office of Ports & Waterways Planning, W21–311, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 or via email to *mh@dot.gov.* Telephone (202) 366–1123; Fax (202) 366–5904.

FOR FURTHER INFORMATION CONTACT: Timothy Pickering, Office of Ports & Waterways Planning, W21–312, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone (202) 366–0704; Fax (202) 366–5904 or email Mr. Pickering at *mh@dot.gov.* You may also visit MARAD's Marine Highway web page at *http://www.marad.dot.gov* search ''America's Marine Highway Program.'' MARAD's Gateway Offices can also respond to questions about the Marine Highway Program, Route Designations, and Project Designation Open Season. Offices contact information is available on the MARAD website at *http://www.marad.dot.gov* search ''Office of Gateways.''

SUPPLEMENTARY INFORMATION: As originally announced in the **Federal Register** on June 2, 2014 (79 FR 31404), the scope of the Marine Highway Program has been expanded to encompass all of the United States' domestic marine transportation system. Previously, the Program only included waterways that paralleled landside transportation routes, and thus, excluded routes between the mainland and non-contiguous ports and between islands, such as those in Hawaii and Puerto Rico. The expanded scope comes from Section 405 of The Coast Guard and Marine Transportation Act of 2012 (Pub. L. 112–213), which reads: ''[t]he Secretary shall designate short sea transportation routes as extensions of the surface transportation system to focus public and private efforts to use the waterways to relieve landside congestion along coastal corridors or to promote short sea transportation.'' The scope was further expanded in Section 3508 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), which adds to the definition of freight by adding cargo ''shipped in discrete units or packages that are handled individually, palletized, or unitized for purposes of transportation'' and ''freight vehicles carried aboard commuter ferry boats.'' In addition, the revised final rule that outlines the scope of the Marine Highway Program (46 CFR part 393) was published in the **Federal Register** (82 FR 56902) on December 1st, 2017, and became effective on January 2, 2018.

The purpose of the open season call for project designation is to seek eligible Marine Highway Projects that may establish new or enhance existing Marine Highway Services. Eligible projects may be designated as Marine Highway Projects by the Secretary of Transportation. Being designated a Marine Highway Project allows the Department of Transportation resources to be used to assist public project sponsors, ports, and other local transportation or economic development agencies in the development of their Marine Highway Projects.

The Department's objective through this program is to reduce landside congestion and increase the use of domestic marine transportation by supporting the development of transportation options for shippers. These services provide economic and environmental benefits to the U.S. public at large. Marine Highway Program Designated Projects can improve safety and system resilience, and serve to reduce transportation-related air emissions, transportation costs for shippers, energy consumption, and costs associated with landside transportation infrastructure.

The Department of Transportation will accept and process Project Designation applications that propose to operate or expand service on Designated Marine Highway Routes.

Participation

The Marine Highway Project Designation application process is detailed in 46 CFR Section 393.4 *Marine Highway Projects,* which is accessible online at *https://www.federalregister.gov* search ''Revision of the America's Marine Highway Program Regulations.''

Although Marine Highway Project Designations often involve private entities such as vessel operators, the applications must be sponsored and submitted to the Department of Transportation by a public entity, such as a State Department of Transportation, Metropolitan Planning Organization (MPO), or Port Authority. Public/private partnerships are encouraged.

To be eligible for Marine Highway Project Designation status, the proposed project must (1) use U.S. documented vessels, (2) transport containerized freight, trailer-based freight, palletized or unitized freight, or freight carried on passenger vessels, and (3) operate on a designated Marine Highway Route. (Refer to 46 CFR 393.4(c) for a comprehensive description of project eligibility). For further information on recommending that a navigable waterway be designated as a Marine Highway Route, please contact your regional Gateway Office.

(Authority: 49 CFR Sections 1.92 and 1.93)

* * * * *

Date: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03598 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0021]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel AEOLUS (51′ Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no

more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0021 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0021 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0021, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AEOLUS is:

—*Intended Commercial Use of Vessel:* ''Sailing instruction specific to Ketch rig and coastal charters.''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: San Diego, CA)

—*Vessel Length and Type:* 51′ sailboat

The complete application is available for review identified in the DOT docket as MARAD–2019–0021 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0021 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03601 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0028]

Request for Comments on the Renewal of a Previously Approved Information Collection: Requirements for Establishing U.S. Citizenship

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected are Affidavits of U.S. Citizenship filed with MARAD to determine if the applicants are eligible to participate in various benefit programs offered by the agency. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before April 30, 2019.

ADDRESSES: You may submit comments [identified by Docket No. MARAD–2019–0028] through one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the

above DOT docket number and follow the online instructions for submitting comments.

• *Fax:* 1–202–493–2251.

• *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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: Michael Pucci, 202–366–5167, Office of Maritime Program, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, Email: *Michael.Pucci@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Establishing U.S. Citizenship—46 CFR 355.

OMB Control Number: 2133–0012.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: Maritime Administration implementing regulations at 46 CFR parts 355 and 356 set forth requirements for establishing U.S. citizenship in accordance with MARAD statutory authority. Those receiving benefits under 46 U.S.C. Chapters 531, 535, and 537 (formerly the Merchant Marine Act, 1936, as amended), or applicants seeking a fishery endorsement eligibility approval pursuant to the American Fisheries Act must be citizens of the United States within the meaning of 46 U.S.C. 50501, (formerly Section 2 of the Shipping Act, 1916, as amended). In either case, whether seeking program benefits or fishery endorsement eligibility, Section 50501 sets forth the statutory requirements for determining whether an applicant, be it a corporation, partnership, or association is a U.S. citizen. 46 CFR part 356 is distinguished from 46 CFR part 355 in that Part 356 establishes requirements for U.S. citizenship exclusively in accordance with the AFA while Part 355 is applied for purposes of establishing citizenship across multiple MARAD programs arising under other statutory authority. Most program participants are required to submit to MARAD on an annual basis the form of affidavit prescribed by Part 355 or Part 356.

Respondents: Shipowners, charterers, equity owners, ship managers, etc.

Affected Public: Business or other-for-profit.

Estimated Number of Respondents: 500.

Estimated Number of Responses: 500.

Estimated Hours per Response: 5.

Annual Estimated Total Annual Burden Hours: 2,500.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: February 26, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03691 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0016]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MARUQUIS (43′ Sail Boat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0016 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0016 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0016, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MARUQUIS is:

—*Intended Commercial Use of Vessel:* Will use the vessel as the owner/operator while employed with Boy Scouts of America Florida Sea Base High Adventure Coral Reef Sailing Program. As captain, I will teach boy scouts accompanied by their scout leaders basic sailing practice in the near coastal waters of the Florida Keys.

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Islamorada, FL)

—*Vessel Length and Type:* 43′ Sailboat

The complete application is available for review identified in the DOT docket as MARAD–2019–0016 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0016 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03608 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0025]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KAITLYN NICOLE (33′ Pilot House Boat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0025 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0025 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0025, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KAITLYN NICOLE is:

—*Intended Commercial Use of Vessel:* ''Will be using the vessel for Sport Fishing/Sight Seeing Charters''

—*Geographic Region Including Base of Operations:* ''New Jersey, New York (excluding New York Harbor), South Carolina, North Carolina'' (Base of Operations: Kenilworth, NJ)

—*Vessel Length and Type:* 33′ Pilot House Boat

The complete application is available for review identified in the DOT docket as MARAD–2019–0025 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary.

There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0025 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.* * *

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03606 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0014]

Request for Comments on the Renewal of a Previously Approved Information Collection: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies and Non-Profit Maritime Training Facilities

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on 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 compliance with applicable statutory requirements regarding surplus government property. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before April 30, 2019.

ADDRESSES: You may submit comments [identified by Docket No. MARAD–2019–0014] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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: Deveeda Midgette, 202–366–2354, Maritime Administration, Office of Sealift Support, 1200 New Jersey Avenue SE, Washington, DC 20590. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies and Non-Profit Maritime Training Facilities.

OMB Control Number: 2133–0504.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The Maritime Administration requires approved maritime training institutions seeking excess or surplus government property to provide a statement of need/justification prior to acquiring the property.

Respondents: Maritime training institutions such as the U.S. Merchant Marine Academy, State Maritime Academies and non-profit maritime institutions.

Affected Public: State, Local, or Tribal Government.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 40.

Estimated Hours per Response: 1 hour.

Annual Estimated Total Annual Burden Hours: 40.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: February 26, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03693 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0017]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel WILD BILL (38′ Motorboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or

more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0017 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0017 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0017, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WILD BILL is:

—Intended Commercial Use of Vessel: ''This vessel is going be used as an uninspected passenger vessel. A quot; six pack charter boat & quot;.''
—Geographic Region Including Base of Operations: ''Alabama'' (Base of Operations: Orange Beach, AL)
—Vessel Length and Type: 38′ motorboat

The complete application is available for review identified in the DOT docket as MARAD–2019–0017 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0017 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121. * * *

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03611 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0023]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BLUE (46′ Trawler); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0023 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0023 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West

Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0023, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled *Public Participation.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BLUE is:

—*Intended Commercial Use of Vessel:* The vessel will be used for half and full day charters for people who want to see the Santa Barbara Channel and Channel Islands. Onboard activities may include general sightseeing, sunset and dinner cruises. In addition, we will have the capability for multi- day trips (up to three days), but anticipate that the majority of the charters will be no longer than a single day of half day trip.

—*Geographic Region Including Base of Operations:* ''California, Oregon, Washington '' (Base of Operations: Channel Islands Harbor, CA)

—*Vessel Length and Type:* 46′ trawler

The complete application is available for review identified in the DOT docket as MARAD–2019–0023 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0023 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03602 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0022]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MARY DOLL (43′ Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0022 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0022 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0022, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MARY DOLL is:

—*Intended Commercial Use of Vessel:* ''Intended to use for chartering when not used by current owners.''

—*Geographic Region Including Base of Operations:* ''North Carolina (Base of Operations: New Bern, NC)

—*Vessel Length and Type:* 43′ Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2019–0022 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0022 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121) * * *

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03609 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0018]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel M/Y SERIOUS FREEDOM (53′ Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0018 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0018 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0018, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey

Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel M/Y SERIOUS FREEDOM is:

—*Intended Commercial Use of Vessel:* ''The vessel will be used for visitor sightseeing in the area of Dutch Harbor, Alaska. Trips will be during the daylight hours and are intended to take visitors to see the Dutch Harbor area, get an introduction to its history, the local culture, wildlife and sealife. The number of visitors to Dutch Harbor has been rapidly increasing as cruise ships add it to their itinerary, and it remains the largest seafood port by volume in the United States. Research and general interest in the Arctic are increasing and Dutch Harbor is well positioned to provide support for this activity. Some 9,000 visitors are expected in the summer of 2019.''

—*Geographic Region Including Base of Operations:* ''Alaska (excluding waters in the southeastern Alaska)'' (Base of Operations: Dutch Harbor, AK)

—*Vessel Length and Type:* 53′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0018 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0018 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.* * *

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03607 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0024]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel FELIX (52′ Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0024 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0024 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0024, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled *Public Participation.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453,

Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FELIX is:

—*Intended Commercial Use of Vessel:* ''Take on paying passengers/clients for sailing trips and recreational SCUBA diving of up to 1–2-week duration liveaboard.''

—*Geographic Region Including Base of Operations:* ''Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York (excluding New York Harbor), Connecticut, Rhode Island, Maine, Puerto Rico'' (Base of Operations: Delaware)

—*Vessel Length and Type:* 52′ Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2019–0024 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0024 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: February 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–03604 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0003; Notice 2]

Forest River, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Forest River, Inc. (Forest River), has determined that certain model year (MY) 2017–2018 Forest River buses and school buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials. Forest River filed two separate noncompliance reports, both dated November 30, 2017. Forest River then petitioned NHTSA on December 12, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of this petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5304, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview

Forest River has determined that certain MY 2017–2018 Forest River buses and school buses do not fully comply with FMVSS No. 205, *Glazing Materials* (49 CFR 571.205). Forest River filed two separate noncompliance reports, both dated November 30, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Forest River then petitioned NHTSA on December 12, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

II. Buses Involved

Approximately 544 MY 2017–2018 Forest River school buses and approximately 2,121 MY 2017–2018 Forest River buses, manufactured between June 26, 2017, and November 10, 2017, are potentially involved. The following Forest River buses are involved:

School Buses

- Starcraft Allstar XL, Quest XL and Prodigy

Buses

- Starcraft Allstar XL, Allstar, Starlite, XLT, Starquest, and Allstar MVP
- StarTrans President, PS2, Senator, Senator II, Candidate, and Candidate II
- Glaval Apollo, Commute, Concorde II, Entourage, Legacy, Primetime, Sport, Titan II, Titan II LF and Universal
- Elkhart Coach ECII

III. Noncompliance

Forest River explains that the noncompliance is that the subject buses were equipped with curbside entry door glass that does not fully comply with paragraph S6 of FMVSS No. 205. Specifically, the curbside entry door glass has the AS3 glazing marking when it should have been marked with the AS2 glazing marking.

IV. Rule Requirements

Section S6 of FMVSS No. 205, titled ''Certification and Marking'' includes the requirements relevant to this petition:

- A prime glazing material manufacturer must certify, in accordance with 49 U.S.C. 30115, each piece of glazing material to which this standard applies is designed as:

a. A component of any specific motor vehicle or camper; or

b. To be cut into components for use in motor vehicles or items of motor vehicle equipment.

- A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1–1996, in letters and numerals of the same size, the symbol ''DOT'' and a manufacturer's code mark that NHTSA assigns to the manufacturer.
- NHTSA will assign a code mark to a manufacturer after the manufacturer submits a written request to the Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration. The request must include the company name, address, and a statement from the manufacturer certifying its status as a prime glazing manufacturer as defined in paragraph S4.
- A manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, must:

a. Mark that material in accordance with section 7 of ANSI/SAE Z26.1–1996; and

b. Certify that its product complies with this standard in accordance with 49 U.S.C. 30115.

V. Summary of Forest River's Petition

Forest River described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety. In support of its petition, Forest River submitted the following arguments:

1. As an initial matter, the noncompliance does not present a safety risk because it has no effect on the structure, performance, or safety of the glass. That is, the noncompliance relates solely to the glass' markings, specifically the use of the marking ''AS3,'' instead of ''AS2.''

2. The glass required for the subject buses and school buses must meet the requirements of ANSI 26.1–1996 AS2. Forest River requested that a sample of the glass be tested to ensure its compliance with all applicable standards. The test results have affirmed that the glass indeed meets ANSI 26.1–1996 AS2's requirements and is compliant for the designed position in which it is applied.

3. Forest River is enclosing copies of statements from the glass manufacturer Cleer Vision, and test data confirming the glass' compliance with ANSI and FMVSS No. 205's performance standards.

4. Forest River stated that the agency has previously granted numerous petitions for determinations of inconsequential noncompliance in regard to FMVSS No. 205, including petitions involving mismarkings similar to the instant matter. See the following recent examples:

a. Mitsubishi Motors North America, Inc. Petition, 80 FR 72482 (November 19, 2015) (involving rear door windows marked with the model number ''M66'' instead of the correct ''M131'');

b. Custom Glass Solutions Upper Sandusky Corporation Petition, 79 FR 49833 (January 23, 2015) (involving laminated glass panes mistakenly marked as ''tempered'' and with the incorrect manufacturer's DOT number, model number, and manufacturer's trademark).

c. Mitsubishi Motors North America, Inc. Petition, 79 FR 49833 (August 22, 2014) (involving rear door windows marked with the model number ''M13l'' instead of the correct ''M129'');

d. General Motors LLC Petition, 79 FR 23402 (April 28, 2014) (involving quarter windows marked as ''AS2'' instead of the correct ''AS3'').

Forest River concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Forest River's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and following the online search instructions to locate the docket number listed in the title of this notice.

VI. NHTSA's Analysis

NHTSA has reviewed Forest River's petition and agrees with Forest River that the subject noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that the mismarking of the glazing material has no effect on the operational safety of the subject buses. This noncompliance to the labeling requirements in FMVSS No. 205 will have an inconsequential effect on motor vehicle safety because:

Forest River's petition included letters from Cleer Vision, stating that the glass inadvertently marked AS3 does in fact meet all requirements of AS2 certification including, but not limited to, the visual light transmittance being 70 percent or greater. Cleer Vision provided a Certificate of Conformity from Guardian Industries certifying that the float glass products they manufacture comply with applicable FMVSS specifications with respect to thickness, optics, inclusions, and transmittance. Guardian Industries' provided data showing the average visible light transmittance as 80.03 percent, thus greater than the minimum 70 percent for AS2.

ANSI Z26.1–1996 requires that all AS3 tempered glass pass the ball impact test, fracture test, and the shot bag impact test. In addition to AS3 tempered glass requirements, Forest River's AS2 tempered glass must also meet the light stability, luminous transmittance, and abrasion resistance requirements set forth in ANSI Z26.1–1996 for AS2 tempered glass. Since Forest River's petition focused largely on luminous transmittance, NHTSA contacted Forest River requesting test data confirming that the subject glass meets all the requirements set forth in ANSI Z26.1–1996 for AS2 tempered glass.

In response, Forest River provided a test report documenting the results of testing to all of the requirements for AS2 tempered glass. NHTSA reviewed Forest River's report and verified that the subject glass meets the performance requirements set forth in ANSI Z26.1–1996 for AS2 tempered glass incorporated by reference in FMVSS No. 205.

The agency contacted Forest River on April 2, 2018, asking Forest River what they will do to ensure the

noncompliance does not happen again in the future. In response, Forest River stated that they have implemented a triple verification process between the supplier and Forest River to further prevent future occurrences.

VII. NHTSA's Decision

In consideration of the foregoing analysis, NHTSA has decided that Forest River has met its burden of persuasion that the FMVSS No. 205 noncompliance is inconsequential to motor vehicle safety. Accordingly, Forest River's petition is hereby granted and Forest River is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject buses that Forest River no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant buses under their control after Forest River notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Michael A. Cole,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–03573 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2007–27057]

Notice of Submission of Proposed Information Collections to OMB; Agency Request for OMB Approval of Information Collections: Increasing Charter Air Transportation Options

AGENCY: Office of the Secretary (OST), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT or Department) intention to request an Office of Management and Budget (OMB) control number for requirements in the Department's final rule, *Increasing Charter Air Transportation Options,* that certain disclosures be made to consumers by air charter brokers, air taxi operators, and commuter air carriers.

DATES: Written comments should be submitted by April 30, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number OST–2007–27057 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: Sohum Karia, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, 202–366–9342 (Voice), 202–366–7152 (Fax), or *sohum.karia@dot.gov* (Email). Arrangements to receive this document in an alternative format may be made by contacting the above-named individual.

SUPPLEMENTARY INFORMATION:

Title: Increasing Charter Air Transportation Options.

Type of Review: New Information Collections.

Background: This notice concerns two new information collection requirements in the Department's final rule, *Increasing Charter Air Transportation Options,* 83 FR 46867 (September 17, 2018), which is effective on February 14, 2019. Under the final rule, air charter brokers [1] are authorized to act as indirect air carriers [2] by contracting in their own right with customers to provide charter air transportation and separately arranging with direct air carriers to provide such transportation services. The first information collection pertains to the requirement that air charter brokers disclose in all solicitation materials and advertisements that they are air charter brokers and not direct air carriers. The second information collection involves the requirement that air charter brokers, air taxi operators, and commuter air carriers provide notification to consumers containing pertinent information regarding the terms of the charter air transportation at the time a consumer is considering the purchase of air transportation. If the information is not known at that time or changes thereafter, then the entities must provide notification within a reasonable time after the information becomes known. This information is intended to aid the prospective charterer in making a more informed choice regarding the purchase of charter air transportation, and to facilitate travel by reducing the possibility that the consumer will be misled or ill-informed about key information regarding a given flight before and during his or her trip.

The title, a description of the information collection and respondents, and the periodic reporting burden are set forth below for each of the information collections:

1. Requirement to disclose that air charter brokers are not direct air carriers in advertising and solicitation materials (14 CFR 295.23)

All air charter broker solicitation materials and advertising, including internet web pages, must clearly and conspicuously state that the air charter broker is not a direct air carrier in operational control of aircraft, and that the air service advertised would be provided by a properly licensed direct air carrier.

Respondents: Air charter brokers.

Estimated Number of Respondents: 700. To reach this estimate, the Department began by determining the approximate number of flights arranged by air charter brokers annually, using flight records information from the air traffic control radar system and data reports from private sector aviation research organizations.[3] These data

[1] The final rule defines an air charter broker as ''any person or entity that, as an indirect air carrier, foreign indirect air carrier, or a *bona fide agent,* holds out, sells, or arranges single entity charter air transportation using a direct air carrier.''

[2] ''Indirect air carrier'' means any person who undertakes to engage indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier. 14 CFR 380.2. ''Direct air carrier'' means a certificated commuter or foreign air carrier, or an air taxi operator registered under 14 CFR part 298, or a Canadian charter air taxi operator registered under 14 CFR part 294, that directly engages in the operation of aircraft under a certificate, authorization, permit or exemption issued by the Department. *Id.*

[3] These data are developed from the Enhanced Traffic Management System (ETMS) flight records, and rely on aircraft and user classifications made by air traffic controllers as well as tail number and operator data. The development of these data for the

indicate annual flight activity by these operators of between 760,000 and 1.1 million flights, as shown in Table 1 below.[4]

TABLE 1

Part 135 non-scheduled passenger flights per fiscal year	Part 135 non-scheduled passenger flights
2006	1,005,248
2007	965,401
2008	1,084,398
2009	761,301
2010	900,003
2011	870,619

The Department utilized the most recent figure of 870,619 FY2011 Part 135 Non-Scheduled Passenger Flights (see Table 1). Not all of these flights are revenue flights, since aircraft must sometimes be positioned to meet customers. Although the frequency of non-revenue positioning flights is generally non-public, the Department, based on discussions with parties knowledgeable about this aspect of the industry, estimates that 25 percent of non-scheduled passenger flights are non-revenue, meaning that 75 percent, or 652,964 (870,619 × 75%) are revenue flights. We then estimated the percentage of revenue air charter flights arranged by brokers. There was no firm industry estimate of this value, so we assumed a midrange estimate of 30 percent,[5] resulting in a value of approximately 195,889 (652,964 × 30%) non-scheduled passenger flights arranged by air charter brokers per year. In response to its Notice of Proposed Rulemaking (NPRM), the Department received no public comments disputing this assumption.

The Department sought to derive the number of respondents from the 195,889 flights by estimating of the number of flights arranged annually by the average air charter broker. However, since there was no reliable data on the number of flights arranged by the average air charter broker, we considered various estimates of the number of air charter brokers based on general industry knowledge, avoiding selection of extreme outliers. For instance, because the industry includes both large and small entities, we did not consider an extremely low estimate of five respondents, which would amount to approximately 39,200 (195,889/5) flights arranged annually by each broker, and would not account for the relatively lower business volume of smaller entities. Similarly, we did not consider extremely high estimates, such as 10,000 respondents, which would amount to approximately 20 flights arranged annually by each broker, and would not account for the relatively higher business volume of larger entities. Ultimately, our approach yielded an estimate of 700 respondents, with an estimated 280 flights arranged annually per broker (195,889/700).

A value of 700 respondents is reasonable based on public comments in response to the NPRM. These comments noted that the industry has relatively low barriers to entry and therefore is likely comprised of many small air charter brokers operating in the marketplace, in addition to a few dozen larger, more established, and well-known companies. Therefore, many of those 700 would likely arrange fewer than the average of 280 flights annually, and a few dozen would likely arrange more than that average. Accordingly, given our assumption of 195,889 total annual flights arranged by air charter brokers, we estimate that approximately 700 respondents will be subject to the rule's information collection requirements pertaining to air charter brokers.

Frequency: 15 minutes per flight, for approximately 280 flights per year. The estimate of 280 flights derives from our assumption of 195,889 total annual flights arranged by air charter brokers and our estimate of 700 air charter broker respondents (195,889/700). We believe that the burden required for an air charter broker to comply with this disclosure requirement by changing a small portion of an air charter broker's advertising web pages or printed materials would be minimal. To quantify the estimated burden, it was assumed that accomplishing these disclosures takes 15 minutes of the time of a qualified sales staff person employed by the air charter broker, comprised of 10 minutes required to draft the language to be used and 5 minutes to post this information on the air charter broker's website. It was also assumed that each flight involves one advertisement or solicitation material, though this is likely an overestimate given that such materials in this industry are primarily displayed or sent electronically to many consumers with identical content and form, resulting in minimal burden to the broker per individual consumer.

Estimated Annual Burden per Respondent: 70 hours, given that each advertisement or solicitation material would require a burden of 15 minutes, and that each air charter broker will arrange an estimated 280 flights per year (280 × .25 hours). However, discussions with individuals knowledgeable about the current air charter broker industry indicated that making the required disclosures is already customary business practice in a significant part of the industry. Comments received in response to the NPRM confirmed the Department's prior understanding. Thus, the burden of compliance with this aspect of the final rule will be minimal for entities in the air charter broker industry.

Estimated Total Annual Burden: 49,000 hours. This figure derives from our estimate of 700 respondents, with approximately 70 hours annually per respondent (700 × 70 hours). Alternatively, the estimate of 49,000 hours results by multiplying our previously stated estimates of 195,889 total annual flights arranged by air charter brokers and a burden of 15 minutes per flight (195,889 × .25 hours ~ 48,972).

2. Requirement for air charter brokers, air taxi operators, and commuter air carriers to charterers to provide certain disclosures to consumers (14 CFR 295.24 and 298.80)

The final rule requires that before entering a contract for a specific flight or series of flights with charterers, air charter brokers must make the following disclosures: (a) The corporate name of the direct air carrier or direct foreign air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that direct carrier holds itself out to the public; (b) The capacity in which the air charter broker is acting in contracting for the air transportation, *i.e.,* as an indirect air carrier, indirect foreign air carrier, as an agent of the charterer, or as an agent of the direct air carrier or direct foreign air carrier that will be in operational control of the flight; (c) The existence or absence of liability insurance held by the air charter broker covering the charterer and passengers and property on the

Federal Aviation Administration (FAA) Business model is presented in the report ''Air Traffic Services Business Model: Overview, Model Description and Applications with Supporting Documentation, Final Report'', September 2011, prepared for the FAA by GRA, Incorporated, a contractor.

[4] Based on the data developed by GRA, Incorporated, for the FAA, Table 1 displays annual flight activity for non-scheduled Part 135 passenger operations from Fiscal Year 2006 through Fiscal Year 2011. The Department was unable to supplement Table 1 with data from subsequent fiscal years, as FAA has ceased maintaining the information. Nevertheless, the Department believes that data from FY2012–2017 would not alter our analysis.

[5] The Department also considered a low estimate of 20 percent, resulting in a value of 130,593 flights, and a high estimate of 40 percent, resulting in a value of 261,186. In order to reach a more definitive estimate of the number of respondents, this notice focuses on the midrange estimate of 30 percent.

charter flight, and the monetary limits of any such insurance.

The final rule further requires that before entering a contract for a specific flight or series of flights with charterers, air charter brokers must make the following disclosures upon request of the charterer, prior to the start of the air transportation: (a) If the air charter broker is acting as the agent of the charterer, the air charter broker must disclose the existence of any corporate or business relationship, including a preexisting contract, between the air charter broker and the direct air carrier or direct foreign air carrier that will be in operational control of the flight that may have a bearing on the air charter broker's selection of the direct carrier that will be in operational control of the flight; (b) The total cost of the air transportation paid by the charterer to or through the air charter broker, including any air charter broker or carrier-imposed fees or government-imposed taxes and fees. Specific individual fees, taxes, or costs may, but are not required to be itemized. The total cost of the air transportation is not required to include fees charged by third-parties; (c) The existence of any fees and their amounts collected by third-parties, if known (or a good faith estimate if not known), including fuel, landing fees, and aircraft parking or hangar fees, for which the charterer will be responsible for paying directly.

If any of the information that is required to be disclosed to the charterer or requested by the charterer to be disclosed is not known at the time the contract is entered into or changes thereafter, air charter brokers must provide the information to the charterer within a reasonable time after such information becomes available to the air charter broker, such that the charterer has enough time to make an informed decision as to whether to accept the additional information or accept the change.

If the information that is required to be disclosed to the charterer or requested by the charterer to be disclosed changes after the air transportation covered by the contract has begun, air charter brokers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available to the air charter broker.

In addition, the final rule requires that before entering a contract for a specific flight or series of flights with charterers, air taxi operators and commuter air carriers must make similar disclosures, prior to the start of the air transportation. For example, they must disclose that the flight will be performed by another direct air carrier or direct foreign air carrier if that is the case, as well as the corporate name of the direct air carrier or direct foreign air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that direct carrier holds itself out to the public. If the flight is to be performed by another direct air carrier or direct foreign air carrier, they must disclose the capacity in which the air taxi operator or commuter air carrier is acting in contracting for the air transportation, *i.e.,* as a principal, as an agent of the charterer, or as an agent of the direct air carrier that will be in operational control of the flight.

Air taxi operators and commuter air carriers must also make the following disclosures upon request of the charterer, prior to the start of the air transportation: (a) If the flight is to be performed by another direct air carrier or foreign direct air carrier and the air taxi operator or commuter air carrier is acting as the agent of the charterer, the air taxi operator or commuter air carrier must disclose the existence of any corporate or business relationship, including a preexisting contract, between the air taxi operator or commuter air carrier and the direct carrier that will be in operational control of the flight that may have a bearing on the air taxi operator's or commuter air carrier's selection of the direct carrier that will be in operational control of the flight; (b) The total cost of the air transportation paid by the charterer to or through the air taxi operator or commuter air carrier, including any carrier-imposed fees or government-imposed taxes and fees. Specific individual fees, taxes, or costs may, but are not required to be itemized. The total cost of the air transportation is not required to include fees charged by third parties; (c) The existence of any fees and their amounts collected by third parties, if known (or a good faith estimate if not known), including fuel, landing fees, and aircraft parking or hangar fees for which the charterer will be responsible for paying directly.

If any of the information that is required to be disclosed to the charterer or requested by the charterer to be disclosed is not known at the time the contract is entered into or changes thereafter, air taxi operators and commuter air carriers must provide the information to the charterer within a reasonable time after such information becomes available to the air taxi operator or commuter air carrier, such that the charterer has enough time to make an informed decision as to whether to accept the additional information or accept the change.

If the information that is required to be disclosed to the charterer or requested by the charterer to be disclosed changes after the air transportation covered by the contract has begun, air taxi operators and commuter air carriers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available to the air taxi operator or commuter air carrier.

Respondents: Air taxi operators; commuter air carriers operating or arranging non-scheduled, charter flights operated pursuant to Federal Aviation Regulations (FAR) Part 135 and 14 CFR part 298; and air charter brokers.

Estimated Number of Respondents: 2,855, of which 2,155 [6] are air taxi operators and commuter air carriers and 700 are air charter brokers.

Frequency: 15 minutes per flight, for approximately 280 flights per year. The estimate of 280 flights derives from our assumption of 195,889 total annual flights arranged by air charter brokers and our estimate of 700 air charter broker respondents (195,889/700). For each air charter broker transaction, discussions with individuals knowledgeable about the current air charter broker industry indicated that the time required for an air charter broker to record and share the necessary data elements with a charterer was modest. To estimate the cost of this for air charter brokers not currently providing charterers with the identified disclosures, it is assumed that accomplishing the disclosures takes 15 minutes of the time of a qualified sales staff person employed by the air charter broker. Part of the justification for this time estimate is that the information to be disclosed is comprised of data elements that arise naturally from the arrangement of a flight operated by a direct air carrier. Given the substantive similarity of the disclosures required of air taxi operators and commuter air carriers, the Department assumed that they also require no more than 15 minutes per transaction.

Estimated Annual Burden on Respondents: 70 hours for air charter brokers, assuming 15 minutes per transaction and 280 transactions per year per respondent (280 × .25 hours). Regarding the estimated 2,155 taxi operators and commuter air carriers, given our previously stated estimate of

[6] This estimate is based on October 2012 FAA data. ''Study of Operators Regulated Under Part 135,'' at ES–2, Federal Aviation Administration (April 2016), *available at: http://nata.aero/data/files/gia/4656_001.pdf.*

652,964 non-scheduled passenger revenue flights operated annually under Part 135, we estimate approximately 303 (652,964/2,155) transactions annually per air taxi operator or commuter air carrier. Assuming 15 minutes per transaction, we estimate the total annual burden per respondent to be approximately 75 hours and 45 minutes (303 × .25 = 75.75). However, discussions with individuals knowledgeable about the industry indicated that making these disclosures to charterers is already a standard part of customary and usual business practices for air charter brokers as well as air taxi operators and commuter air carriers. Thus, these entities should expect little or no incremental burden due to these disclosure requirements, as supported by comments received in response to the Department's NPRM.

Estimated Total Annual Burden: The estimated total annual burden would be 212,241 hours and 15 minutes. Regarding air charter brokers, based on the estimate of 700 respondents, with approximately 70 hours annually per respondent, the estimated total annual burden of the flight-specific disclosure requirements would be 49,000 hours. Regarding air taxi operators and commuter air carriers, based on the estimate of 2,155 respondents, with approximately 75.75 hours annually per respondent, the estimated total annual burden would be 163,241 hours and 15 minutes (2,155 × 75.75). As stated previously, the total annual incremental burden to air taxi operators and commuter air carriers is expected to be minimal to none, since making these disclosures is already standard practice for this segment of the industry.

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 the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on February 22, 2019.

Blane A. Workie,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 2019–03678 Filed 2–28–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR) will be held in St. Petersburg, Florida from March 25–27, 2019, at the below times and location:

On March 25–26, 2019 from 8:30 a.m. to 4:30 p.m., at the Bay Pines VA Healthcare System, 10000 Bay Pines Blvd., Bay Pines, FL 33744, ECR Conference Room.

On March 27, 2019 from 8:30 a.m. to 12:00 p.m., at the Bay Pines VA Healthcare System, 10000 Bay Pines Blvd., Bay Pines, FL 33744, ECR Conference Room.

The purpose of the Committee is to provide advice to the Secretary on the rehabilitation needs of Veterans with disabilities and on the administration of VA's rehabilitation programs.

On March 25–26, 2019, Committee members will be provided with updated briefings on various VA programs designed to enhance the rehabilitative potential of disabled Veterans. On March 27, 2019, the Committee will begin consideration of potential recommendations to be included in the Committee's next annual report. The meeting is open to the public.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to Latrese Arnold, Designated Federal Officer, Veterans Benefits Administration (28), 810 Vermont Avenue NW, Washington, DC 20420, or via email at *Latrese.Arnold@va.gov.* In the communication, writers must identify themselves and state the organization, association or person(s) they represent. Because the meeting is being held in a government building, a photo I.D. must be presented as part of the clearance process. Due to an increase in security protocols, and in order to prevent delays in clearance processing, you should allow an additional 30 minutes before the meeting begins. Any member of the public who wishes to attend the meeting should RSVP to Latrese Arnold at (202) 461–9773 no later than close of business, March 21, 2019, at the phone number or email address noted above.

Dated: February 26, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–03695 Filed 2–28–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Agency Information Collection Activity: Application for Accrued Amounts Due a Deceased Beneficiary

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 30, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to *Nancy Kessinger,* Veterans Benefits Administration (20M3), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0216'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION:

Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 5121.

Title: Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21P–601.

OMB Control Number: 2900–0216.

Type of Review: Extension without change of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services established by law for veterans, service personnel, and their dependents and/or beneficiaries. Information is requested by this form under the authority of 38 U.S.C. 5121, which provides the eligibility criteria for the payment of accrued benefits. VA regulated the eligibility criteria 38 CFR 3.1000 through § 3.1010.

VA Form 21P–601 is used to gather the information necessary to determine a claimant's entitlement to accrued benefits. Accrued benefits are amounts of VA benefits due, but unpaid, to a beneficiary at the time of his or her death. Benefits are paid to eligible survivors based on the priority described in 38 U.S.C. 5121(a). When there are no eligible survivors entitled to accrued benefits based on their relationship to the deceased beneficiary, the person or persons who bore the expenses of the beneficiary's last illness and burial may claim reimbursement for these expenses from accrued amounts.

Affected Public: Individuals and households.

Estimated Annual Burden: 7,920 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 15,840.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2019–03599 Filed 2–28–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0564]

Agency Information Collection Activity: Direct Deposit Enrollment; International Direct Deposit Enrollment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 30, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0564'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Direct Deposit Enrollment (24–0296); International Direct Deposit Enrollment (24–0296a).

OMB Control Number: 2900–0564.

Type of Review: Revision of a currently approved collection.

Abstract: The information collected on these forms will be used to enroll VA benefit recipients in the electronic funds transfer (EFT) program.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–03627 Filed 2–28–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Takes of Marine Mammals Incidental to Specified Activities: Taking Marine Mammals Incidental to U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active Sonar Training and Testing in the Central and Western North Pacific Ocean and Eastern Indian Ocean; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 180809740–9103–01]

RIN 0648–BI42

Takes of Marine Mammals Incidental to Specified Activities: Taking Marine Mammals Incidental to U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active Sonar Training and Testing in the Central and Western North Pacific Ocean and Eastern Indian Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the use of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar systems onboard U.S. Navy surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy in the western and central North Pacific Ocean and eastern Indian Ocean (SURTASS LFA sonar activities) beginning August 2019. Pursuant to section 101(a)(5)(A) of the MMPA, NMFS is requesting comments on its proposal to issue regulations to govern the incidental take of marine mammals by Level B harassment during SURTASS LFA sonar activities. The Fiscal Year 2019 (FY19) National Defense Authorization Act (NDAA), signed on August 13, 2018, amended the Marine Mammal Protection Act to extend the maximum authorization period of permitted incidental takings of marine mammals under section 101(a)(5)(A) in the course of specified military readiness activities by the Department of Defense from five to seven years. Therefore, the authorization, if issued, would be in effect from August 2019 to August 2026. 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. The Navy's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal Year 2004 (FY 2004 NDAA).

DATES: Comments and information must be received no later than April 1, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0014, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0014,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Wendy Piniak, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

NMFS received an application from the Navy requesting regulations and a related letter or letters of authorization (LOA) to take multiple species of marine mammals by Level B harassment incidental to SURTASS LFA sonar activities. Please see ''Background'' below for definitions of harassment. This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Navy's specified activities.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) generally directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat (see the discussion below in the Proposed Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule and any associated LOAs. As described in the next section, the MMPA has been amended in a number of ways when the specified activity is a military readiness activity, including most recently in 2018 to extend the maximum authorization period under section 101(a)(5)(A) to seven years for Department of Defense military readiness activities. As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization may be issued following notice and opportunity for public comment.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have

an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''), and requirements pertaining to the monitoring and reporting of such takings.

The 2004 NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). In addition, the FY 2004 NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization (ITA) process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. As mentioned above, the NDAA for FY 2019 amended the MMPA to extend the authorized period of permitted incidental takings of marine mammals covered by section 101(a)(5)(A) in the course of specified military readiness activities from five to seven years.

The allowance of incidental taking under section 101(a)(5)(A) requires promulgation of activity-specific regulations. Under NMFS' implementing regulations for section 101(a)(5)(A), a Letter of Authorization (LOA) may be issued consistent with the activity-specific regulations, provided that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. The promulgation of activity-specific regulations (with their associated prescribed mitigation, monitoring, and reporting) requires notice and opportunity for public comment.

National Marine Sanctuaries Act

NMFS will work with NOAA's Office of National Marine Sanctuaries to fulfill our responsibilities under the NMSA as warranted and will complete any NMSA requirements prior to a determination on the issuance of the final rule and LOAs.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and issuance of the LOA) and alternatives with respect to potential impacts on the human environment. NMFS is a cooperating agency on the Navy's supplemental environmental impact statement/supplemental overseas environmental impact statement (SEIS/SOEIS). NMFS plans to adopt the Navy's SEIS/SOEIS for SURTASS LFA sonar training and testing activities, provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing the incidental take regulations and LOA.

The Navy published a Notice of Availability of a DSEIS/SOEIS for employment of SURTASS LFA sonar in the **Federal Register** on September 7, 2018 (83 FR 45442), which was available for public review and comment until October 22, 2018. The public may view the DSEIS/SOEIS at: *http://www.surtass-lfa-eis.com.*

NMFS will evaluate the comments received on the DSEIS/SOEIS and comments received as a result of this proposed rulemaking prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

Summary of Request

On June 4, 2018, NMFS received a request from the Navy for authorization to take, by harassment, 46 species of marine mammals incidental to the use of SURTASS LFA sonar onboard U.S. Navy surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy in the western and central North Pacific Ocean and eastern Indian Ocean beginning in August 2019. In light of the FY 2019 NDAA amending section 101(a)(5)(A), the period for which the regulations would be effective for issuing the LOA under this rulemaking would extend to August 2026. On July 13, 2018, NMFS published a notice of receipt (NOR) of the Navy's application in the **Federal Register** (83 FR 32615), and requested comments and information related to the Navy's request. The review and comment period for the NOR ended on August 13, 2018. We received one comment in response to the NOR from a private citizen requesting that NMFS deny Navy's incidental take authorization request to avoid harming or killing marine mammals. This comment is available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* We note that the Navy has not requested, nor is NMFS anticipating or proposing to authorize any mortality or any form of Level A harassment and, as discussed in more detail below, impacts to marine mammals are anticipated to be limited to Level B harassment only.

The Navy submitted a revised application on November 13, 2018. This revision included a minor change to the mitigation measures provided in the June 2018 application that was available for public review during the review and comment period for the NOR. This revision does not represent a significant change to the proposed mitigation measures for this proposed rule; however, the revised application is available here: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0* (also see Proposed Mitigation section of this notice for more detail).

The Navy states, and NMFS concurs, that these SURTASS LFA sonar activities, classified as military readiness activities, may incidentally take marine mammals by exposing them to SURTASS LFA sonar at levels that constitute Level B harassment as defined above. The Navy requests authorization to take, by Level B Harassment, individuals from 139 stocks of 46 species of marine mammals (10 species of mysticete (baleen) whales, 31 species of odontocete (toothed) whales, and 5 species of pinnipeds (seals and sea lions)). This rule may also cover the authorization of take of animals from additional associated stocks of marine mammals not listed here, should one or more of the stocks identified in this rule be formally separated into multiple stocks, provided NMFS is able to confirm the necessary findings for the newly identified stocks. As discussed later in this document, incidental takes due to SURTASS LFA sonar will be limited to Level B behavioral harassment. No takes by

Level A harassment are proposed to be authorized as Level A harassment is considered unlikely and will be avoided through the implementation of the Navy's proposed mitigation measures, as discussed below.

In previous SURTASS LFA sonar rulemakings, NMFS authorized some Level A harassment takes in an abundance of caution even though Level A harassment takes were not anticipated. However, to the knowledge of the Navy and NMFS, no Level A harassment takes have resulted over the 17-year history of SURTASS LFA sonar activities. Additionally, the exposure criteria and thresholds for assessing Level A harassment have been modified since prior rules based on the best available science. Under these new metrics, the zone for potential injury is substantially reduced. Therefore, due to the small injury zones and the fact that mitigation measures would ensure that marine mammals would not be exposed to received levels associated with injury, the Navy has not requested authorization for Level A harassment takes, and NMFS is not proposing to authorize any takes by Level A harassment.

NMFS published the first incidental take rule for SURTASS LFA sonar, effective from August 2002 through August 2007, on July 16, 2002 (67 FR 46712); the second rule, effective from August 2007 through August 2012, on August 21, 2007 (72 FR 46846); and the third rule, effective from August 2012 through August 2017, on August 20, 2012 (77 FR 50290).

In 2016, the Navy submitted an application for a fourth incidental take regulation under the MMPA (DoN, 2016) for the taking of marine mammals by harassment incidental to the deployment of up to four SURTASS LFA sonar systems from August 15, 2017, through August 14, 2022. NMFS published a proposed rule on April 27, 2017 (82 FR 19460). On August 10, 2017, the Deputy Secretary of Defense, after conferring with the Secretary of Commerce, determined that it was necessary for the national defense to exempt all military readiness activities that use SURTASS LFA sonar from compliance with the requirements of the MMPA for a period of up to two years beginning August 13, 2017, through August 12, 2019, or until such time when NMFS issues regulations and an LOA under MMPA section 101(a)(5)(A) for military readiness activities associated with the use of SURTASS LFA sonar, whichever is earlier. During the exemption period, all military readiness activities that involve the use of SURTASS LFA sonar are required to comply with all mitigation, monitoring, and reporting measures set forth in the 2017 National Defense Exemption (NDE) for SURTASS LFA sonar, which were based on the measures included in NMFS' prior (2012) Final Rule (77 FR 50290; August 20, 2012) and 2017 Proposed Rule (82 FR 19460; April 27, 2017). As a result of the NDE (available at *http://www.surtass-lfa-eis.com/wp-content/uploads/2018/01/SURTASS_LFA_NDE_10Aug17.pdf*), NMFS did not finalize its April 2017 proposed rule.

The NDE expires August 12, 2019. For this rulemaking, the Navy is proposing to continue using SURTASS LFA sonar systems onboard United States Naval Ship (USNS) surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy within the western and central North Pacific Ocean and eastern Indian Ocean. The operating features of the LFA sonar have remained the same since the 2001 FOEIS/EIS, except to note that the typical duty cycle of LFA sonar, based on historical SURTASS LFA sonar use, is 7.5 to 10 percent (DoN, 2007). The maximum duty cycle remained the same at 20 percent.

For this rulemaking, the Navy scoped the geographic extent of the area where the specified activity will occur (study area) to better reflect the areas where the Navy anticipates conducting SURTASS LFA sonar training and testing activities. Whereas the previous authorizations included certain routine military operations among the scope of actions analyzed, the Navy also has narrowed the scope of activities in the current request for authorization to training and testing activities only due to various statutory and practical considerations, as described in the SURTASS 2018 DSEIS/OEIS (DoN, 2018), Chapter 1, and discussed further below.

Under the proposed rule, the Navy would transmit a total of up to 496 LFA sonar transmission hours per year for its specified activity, as described below (see Description of the Specified Activities section), pooled across all SURTASS LFA sonar-equipped vessels in the first four years of the authorization, with an increase in usage to a total of up to 592 LFA transmission hours in years five through seven.

Description of the Specified Activities

Overview

The Navy's primary mission is to organize, train, and equip combat-ready naval forces capable of accomplishing American strategic objectives, deterring maritime aggression, and assuring freedom of navigation in ocean areas. This mission is mandated by Federal law in Section 5062 of Title 10 of the United States Code, which directs the Secretary of the Navy to ensure the readiness of the U.S. naval forces.

The Secretary of the Navy and the Chief of Navy Operations (CNO) have established that anti-submarine warfare (ASW) is a critical capability for achieving the Navy's mission, and it requires unfettered access to both the high seas and littoral environments to be prepared for all potential threats by maintaining ASW core competency. The Navy is challenged by the increased difficulty in locating undersea threats solely by using passive acoustic technologies due to the advancement and use of quieting technologies in diesel-electric and nuclear submarines. At the same time as the distance at which submarine threats can be detected decreases due to quieting technologies, improvements in torpedo and missile design have extended the effective range of these weapons.

One of the ways the Navy has addressed the changing requirements for ASW readiness was by developing SURTASS LFA sonar, which is able to reliably detect quieter and harder-to-find submarines at long range before these vessels can get within their effective weapons range to launch against their targets. SURTASS LFA sonar systems have a passive component (SURTASS), which is a towed line array of hydrophones used to detect sound emitted or reflected from submerged targets, and an active component (LFA), which is comprised of a set of acoustic transmitting elements. The active component detects objects by creating a sound pulse, or ''ping'' that is transmitted through the water and reflects off the target, returning in the form of an echo similar to echolocation used by some marine mammals to locate prey and navigate. SURTASS LFA sonar systems are long-range sensors that operate in the low-frequency (LF) band (*i.e.,* 100–500 Hertz (Hz)). Because LF sound travels in seawater for greater distances than higher frequency sound, the SURTASS LFA sonar system would meet the need for improved detection and tracking of new-generation submarines at a longer range and would maximize the opportunity for U.S. armed forces to safely react to, and defend against, potential submarine threats while remaining a safe distance beyond a submarine's effective weapons range. Thus, the active acoustic component in the SURTASS LFA sonar is an important augmentation to its passive and tactical systems, as its long-range detection capabilities can effectively

counter the threat to the Navy and national security interests posed by quiet, diesel submarines.

The Navy's proposed specified activity for MMPA incidental take coverage is the continued employment of SURTASS LFA sonar systems onboard USNS surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy in the western and central Pacific Ocean and eastern Indian Ocean, which is classified as a military readiness activity, beginning August 13, 2019. The use of the SURTASS LFA sonar system would result in acoustic stimuli from the generation of sound or pressure waves in the water at or above levels that NMFS has determined would result in take of marine mammals under the MMPA. This is the principal means of marine mammal taking associated with these military readiness activities. In addition to the use of active acoustic sources, the Navy's activities include the movement of vessels. This document also analyzes the effects of this aspect of the activities. NMFS does not anticipate takes of marine mammals to result from ship strikes from any SURTASS LFA vessels because each vessel moves at a relatively slow speed (10 to 12 knots (kt) while transiting), especially when towing the SURTASS and LFA sonar systems (moving at 3 to 4 kt), and for a relatively short period of time. Combined with the use of mitigation measures as noted below, it is likely that surveillance vessels would be able to avoid any marine mammals.

The Navy will restrict SURTASS LFA sonar training and testing activities to the central and western North Pacific Ocean and eastern Indian Ocean. The Navy will not conduct training or testing utilizing SURTASS LFA sonar within the foreign territorial seas of other nations and will maintain SURTASS LFA sonar received levels below 180 decibels (dB) re 1 μPa (root-mean-square (rms)) within 12 nautical miles (nmi) (22 kilometers (km)) of any emerged land features or within the boundaries of designated Offshore Biologically Important Areas (OBIAs) during their effective periods (see Proposed Mitigation section below for OBIA details). In addition to these geographic mitigation measures, the Navy will implement procedural mitigation measures including monitoring for the presence of marine mammals (including visual as well as active and passive acoustic monitoring) and implementing shutdown procedures for marine mammals within a mitigation/buffer zone around the LFA sonar source (see Proposed Mitigation section below for further details).

Dates and Duration

This proposed rule (if made final) and associated LOA would be valid beginning August 13, 2019, through August 12, 2026. The Navy currently conducts SURTASS LFA sonar activities from four vessels. The Navy is planning to add new vessels to its ocean surveillance fleet. As new vessels are developed, the onboard LFA and High Frequency Marine Mammal Monitoring sonar (HF/M3 sonar) systems (discussed below) may need to be updated, modified, or even re-designed. Current indications are that future LFA sonar systems will have the same operational characteristics and that updates and modifications are focused toward miniaturizing the system components to reduce the weight and handling of the systems. If system parameters are modified as a result of these updates the Navy will determine if supplementary analysis would be required to cover the deployment of these new systems. As the new vessels and sonar system components are developed and constructed, at-sea testing would eventually be necessary. The Navy anticipates that new vessels, or new/updated sonar system components, would be ready for at-sea testing beginning in the fifth year of the time period covered by this proposed rule. Thus, the Navy's activity analysis included consideration of the sonar hours associated with future testing of new or updated LFA sonar system components and new ocean surveillance vessels. This consideration resulted in two scenarios of annual sonar transmit hours: Years 1 to 4 would entail 496 hours total per year across all SURTASS LFA sonar vessels, while years 5 to 7 would include an increase in LFA sonar transmit hours to 592 hours across all vessels.

The SURTASS LFA sonar transmission hours represent a distribution across six activities that include (with an approximate allocation of hours indicated):

- Contractor crew proficiency training (80 hours per year);
- Military crew (MILCREW) proficiency training (96 hours per year);
- Participation in or support of naval exercises (96 hours per year);
- Vessel and equipment maintenance (64 hours per year);
- Acoustic research testing (160 hours per year); and
- New SURTASS LFA sonar system testing (96 hours per year; would occur in years 5 to 7).

Each of these activities utilizes the SURTASS LFA sonar system within the operating profile described above; therefore, the number of hours designated for each activity is merely an estimate for planning purposes.

As noted above, this rulemaking would result in the fourth such regulation for the Navy's SURTASS LFA sonar activities. The Navy is currently conducting the specified activities under an NDE that will expire after August 12, 2019. Therefore, the Navy has requested MMPA rulemaking and a LOA for its SURTASS LFA sonar activities effective beginning August 13, 2019, to take marine mammals incidental to the SURTASS LFA sonar activities for a seven year period.

Potential SURTASS LFA Sonar Training and Testing Areas

The potential geographic scope of the SURTASS LFA sonar activities covered by this proposed rule are the western and central North Pacific Ocean and eastern Indian Ocean outside of the territorial seas of foreign nations (generally 12 nautical miles (nmi) (22 kilometers (km) from most foreign nations). Figure 1 depicts the potential areas of SURTASS LFA sonar activities. In areas within 12 nmi from any emergent land (coastal exclusion areas) and in areas identified as OBIAs, SURTASS LFA sonar training and testing would be conducted such that received levels of LFA sonar are below 180 dB re 1 μPa rms sound pressure level (SPL). This restriction would be observed year-round for coastal standoff zones and during known periods of biological importance for OBIAs.

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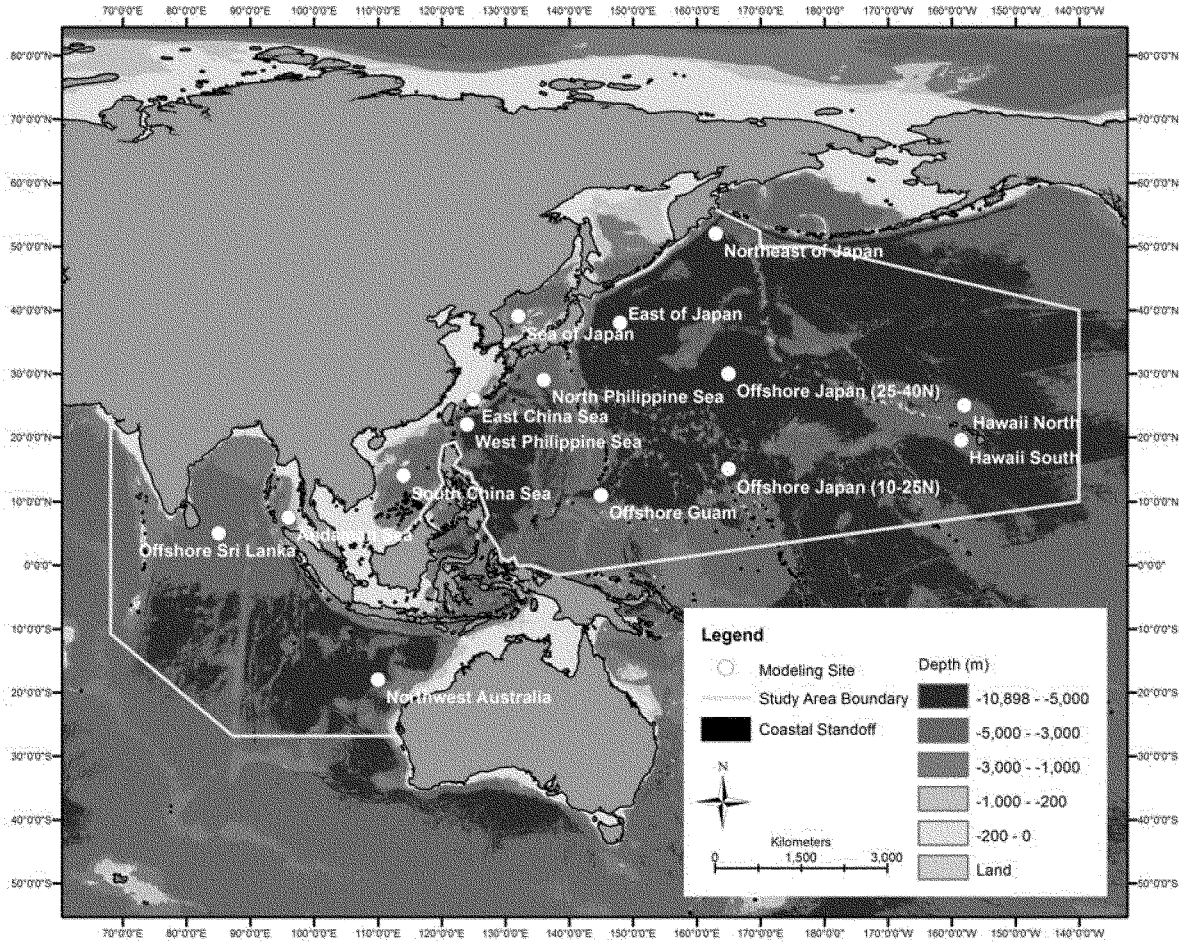

Figure 1. Potential Areas for SURTASS LFA sonar activities including modeling areas (DoN, 2018).

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For this rulemaking, the Navy has scoped the geographic extent of its specified activities to better reflect the areas where the Navy anticipates conducting SURTASS LFA sonar training and testing activities now and into the reasonably foreseeable future. Fifteen representative model areas (shown in Figure 1 and listed in Table 1), with nominal modeling sites in each region, provide geographic context for the proposed SURTASS LFA sonar activities.

TABLE 1—REPRESENTATIVE SURTASS LFA SONAR MODELING AREAS THAT THE NAVY MODELED FOR THE DSEIS/OEIS (DON, 2018) AND THE MMPA RULEMAKING/LOA APPLICATION

Modeled site	Location (latitude/ longitude of center of modeling area)	Notes
East of Japan	38° N, 148° E	
North Philippine Sea	29° N, 136° E	
West Philippine Sea	22° N, 124° E	
Offshore Guam	11° N, 145° E	Navy Mariana Islands Testing and Training Area.
Sea of Japan	39° N, 132° E	
East China Sea	26° N, 125° E	
South China Sea	14° N, 114° E	
Offshore Japan 25° to 40° N	30° N, 165° E	
Offshore Japan 10° to 25° N	15° N, 165° E	
Hawaii North	25° N, 158° W	Navy Hawaii-Southern California Training and Testing Area.
Hawaii South	19.5° N, 158.5° W	Navy Hawaii-Southern California Training and Testing Area.
Offshore Sri Lanka	5° N, 85° E	

TABLE 1—REPRESENTATIVE SURTASS LFA SONAR MODELING AREAS THAT THE NAVY MODELED FOR THE DSEIS/OEIS (DON, 2018) AND THE MMPA RULEMAKING/LOA APPLICATION—Continued

Modeled site	Location (latitude/ longitude of center of modeling area)	Notes
Andaman Sea	7.5° N, 96° E	
Northwest of Australia	18° S, 110° E	
Northeast of Japan	52° N, 163° E	

Detailed Description of the Specified Activities

SURTASS LFA Sonar—SONAR is an acronym for Sound Navigation and Ranging, and its definition includes any system (biological or mechanical) that uses underwater sound, or acoustics, for detection, monitoring, and/or communications. Active sonar is the transmission of sound energy for the purpose of sensing the environment by interpreting features of received signals. Active sonar detects objects by creating a sound pulse, or ''ping'' that is transmitted through the water and reflects off the target, returning in the form of an echo. Passive sonar detects the transmission of sound waves created by an object.

As mentioned previously, the SURTASS LFA sonar system is a long-range, all-weather LF sonar (operating between 100 and 500 Hertz (Hz)) system that has both active and passive components. LFA, the active system component (which allows for the detection of an object that is not generating noise), is comprised of source elements (called projectors) suspended vertically on a cable beneath the surveillance vessel. The projectors produce an active sound pulse by converting electrical energy to mechanical energy by setting up vibrations or pressure disturbances within the water to produce a ping. The Navy uses LFA as an augmentation to the passive SURTASS operations when passive system performance is inadequate. SURTASS, the passive part of the system, uses hydrophones (*i.e.,* underwater microphones) to detect sound emitted or reflected from submerged targets, such as submarines. The SURTASS hydrophones are mounted on a horizontal line array that is towed behind the surveillance vessel. The Navy processes and evaluates the returning signals or echoes, which are usually below background or ambient sound level, to identify and classify potential underwater targets.

LFA Active Component—The active component of the SURTASS LFA sonar system consists of up to 18 projectors suspended beneath the surveillance vessel in a vertical line array. The SURTASS LFA sonar projectors transmit in the low-frequency band (between 100 and 500 Hz). The source level of an individual projector in the SURTASS LFA sonar array is approximately 215 dB re: 1 μPa at 1 m or less. Sound pressure is the sound force per unit area and is usually measured in micropascals (μPa), where one Pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. The commonly used reference pressure level in underwater acoustics is 1 μPa at 1 m, and the units for source level are decibels (dB) re: 1 μPa at 1 m). Because of the physics involved in acoustic beamforming (*i.e.,* a method of mapping noise sources by differentiating sound levels based upon the direction from which they originate) and sound transmission loss processes, the SURTASS LFA sonar array cannot have a SPL higher than the SPL of an individual projector.

The SURTASS LFA sonar acoustic transmission is an omnidirectional beam (a full 360 degrees (°)) in the horizontal plane. The LFA sonar system also has a narrow vertical beam that the vessel's crew can steer above or below the horizontal plane. The typical SURTASS LFA sonar signal is not a constant tone, but rather is a transmission of various signal types that vary in frequency and duration (including continuous wave (CW) and frequency-modulated (FM) signals). A complete sequence of sound transmissions, also referred to by the Navy as a ''ping'' or a wavetrain, can be as short as six seconds (sec) or last as long as 100 sec, with an average length of 60 sec. Within each ping, the duration of any continuous frequency sound transmission is no longer than 10 sec and the time between pings is typically from six to 15 minutes (min). Based on the Navy's historical operating parameters, the average duty cycle (*i.e.,* the ratio of sound ''on'' time to total time) for LFA sonar is normally 7.5 to 10 percent and will not exceed a maximum duty cycle of 20 percent.

Compact LFA Active Component—In addition to the LFA sonar system currently deployed on the USNS IMPECCABLE, the Navy developed a compact LFA (CLFA) sonar system, which is now deployed on its three smaller surveillance vessels (*i.e.,* the USNS ABLE, EFFECTIVE, and VICTORIOUS). The operational characteristics of the active component for CLFA sonar are comparable to the LFA system and the potential impacts from CLFA will be similar to the effects from the LFA sonar system. The CLFA sonar system consists of smaller projectors that weigh 142,000 lbs (64,410 kilograms (kg)), which is 182,000 lbs (82,554 kg) less than the weight of the LFA projectors on the USNS IMPECCABLE. The CLFA sonar system also consists of up to 18 projectors suspended beneath the surveillance vessel in a vertical line array and the CLFA sonar projectors transmit in the low-frequency band (also between 100 and 500 Hz) with the same duty cycle as described for LFA sonar. Similar to the active component of the LFA sonar system, the source level of an individual projector in the CLFA sonar array is approximately 215 dB re: 1 μPa or less.

For the analysis in this rulemaking, NMFS will use the term LFA to refer to both the LFA sonar system and/or the CLFA sonar system, unless otherwise specified.

SURTASS Passive Component—The passive component of the SURTASS LFA sonar system consists of a SURTASS Twin-line (TL–29A) horizontal line array mounted with hydrophones. The Y-shaped array is 1,000 ft (305 m) in length and has an operational depth of 500 to 1,500 ft (152.4 to 457.2 m).

High-Frequency Marine Mammal Monitoring Active Sonar (HF/M3)—Although technically not part of the SURTASS LFA sonar system, the Navy also proposes to use a high-frequency sonar system, called the HF/M3 sonar, to detect and locate marine mammals

within the SURTASS LFA sonar mitigation and buffer zones, as described later in this proposed rule. This enhanced commercial fish-finding sonar, mounted at the top of the SURTASS LFA sonar vertical line array, has a source level of 220 dB re: 1 μPa at 1 m with a frequency range from 30 to 40 kilohertz (kHz). The duty cycle is variable, but is normally below three to four percent and the maximum pulse duration is 40 milliseconds. The HF/M3 sonar has four transducers with 8° horizontal and 10° vertical beamwidths, which sweep a full 360° in the horizontal plane every 45 to 60 sec with a maximum range of approximately 1.2 mi (2 km).

Vessel Specifications—The Navy currently deploys SURTASS LFA sonar on four twin-hulled ocean surveillance vessels that are 235 to 282 ft (72 to 86 m) in length, with twin-shafted diesel electric engines capable of providing 3,200 to 5,000 horsepower. Each vessel has an observation area on the bridge that is more than 30 ft above sea level from where lookouts will monitor for marine mammals whenever SURTASS LFA sonar is transmitting. As stated previously, the Navy may develop and field additional SURTASS LFA equipped vessels, either to replace or complement the Navy's current SURTASS LFA capable fleet, and these vessels may be in use beginning in the fifth year of the time period covered by this proposed rulemaking.

The operational speed of each vessel during sonar activities will be approximately 3.4 miles per hour (mph) (5.6 km per hour (km/hr); 3 knots (kt)) and each vessel's cruising speed outside of sonar activities would be a maximum of approximately 11.5 to 14.9 mph (18.5 to 24.1 km/hr; 10 to 13 kts). During sonar activities, the SURTASS LFA sonar vessels will generally travel in straight lines or in oval-shaped (*i.e.,* racetrack) patterns depending on the training or testing scenario.

Notice of Receipt Comments and Responses

On July 13, 2018, NMFS published a notice of receipt (NOR) of an application for rulemaking in the **Federal Register** (83 FR 32615) and invited comments and information from the interested public. During the 30-day comment period, which ended on August 13, 2018, NMFS received one comment from a private individual. This comment requested NMFS deny the request to authorize the incidental take of marine mammals and stop the Navy from performing SURTASS LFA sonar training and testing activities, citing concern for assault and mortality of marine mammals. As described below, no mortality of marine mammals is anticipated to occur due to SURTASS LFA sonar activities. Therefore, the Navy has not requested and NMFS is not proposing to authorize any mortality of marine mammals. In addition, no injury (Level A harassment) is anticipated as a result of the SURTASS LFA sonar training and testing activities, so Navy has not requested nor has NMFS proposed authorizing takes due to Level A harassment. Therefore, the incidental take of marine mammals associated with the proposed SURTASS LFA sonar activities would be limited to behavioral effects (Level B harassment).

Description of Marine Mammals in the Area of the Specified Activities

Forty-six species of marine mammals, including 10 baleen whale (mysticete); 31 toothed whale (odontocete); and 5 seal/sea lion (pinniped) species that represent 139 stocks (as currently classified) have confirmed or possible occurrence within potential SURTASS LFA sonar activity areas in the central and western North Pacific Ocean and eastern Indian Ocean. Multiple stocks of some species are affected, and independent assessments are conducted to make the necessary findings and determinations for each of these.

There are 11 marine mammal species under NMFS' jurisdiction listed as endangered or threatened under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) with confirmed or possible occurrence in the study area for SURTASS LFA sonar training and testing activities. Marine mammal species under NMFS' jurisdiction in the study area listed as endangered are: North Pacific right whale (*Eubalaena japonica*); gray whale (*Eschrichtius robustus*); blue whale (*Balaenoptera musculus*); fin whale (*Balaenoptera physalus*); Western North Pacific distinct population segment (DPS) of humpback whale (*Megaptera novaeangliae*); sei whale (*Balaenoptera borealis*); sperm whale (*Physeter macrocephalus*); Main Hawaiian Islands Insular DPS of false killer whale (*Pseudorca crassidens*); Western DPS of the Steller sea lion (*Eumetopias jubatus*); and Hawaiian monk seal (*Neomonachus schauinslandi*). The southern DPS of the spotted seal (*Phoca largha*) is listed as threatened under the ESA and is within the study area for SURTASS LFA sonar activities. The aforementioned threatened and endangered marine mammal species also are depleted under the MMPA.

Chinese river dolphins (*Lipotes vexillifer*) do not have stocks designated within the SURTASS LFA sonar study area (see Potential SURTASS LFA Study Area section). The distribution of the Chinese river dolphin is limited to the main channel of a river section between the cities of Jingzhou and Jiangyin. Based on the extremely rare occurrence of these species in the Navy's Study Area and due to the coastal standoff range (*i.e.,* distance of 22 km (13 mi; 12 nmi) from land), take of Chinese river dolphins is not considered a reasonable likelihood; therefore, this species is not addressed further in this document. Similarly, the Taiwanese humpback dolphin, a subspecies of the Indo-Pacific humpback dolphin, is found only in a small, narrow stretch of estuarine waters off the western coast of Taiwan. Take of this species is also not considered a reasonable likelihood and this species is not addressed further in this document.

None of the marine mammal species which the U.S. Fish and Wildlife Service (USFWS) is responsible for managing occur in geographic areas that would overlap with the SURTASS LFA sonar Study Area. Therefore, the Navy has determined that SURTASS LFA sonar activities would have no effect on the endangered or threatened species or the critical habitat of the ESA-listed species under the jurisdiction of the USFWS. These species are not considered further in this notice.

To accurately assess the potential effects of SURTASS LFA sonar activities, the Navy modeled 15 representative sites in the SURTASS LFA sonar activity area. Tables 2 through 16 (below) summarize the abundance, status under the ESA, and density estimates of the marine mammal species and stocks that have confirmed or possible occurrence within the 15 SURTASS LFA sonar modeling areas in the central and western North Pacific Ocean and eastern Indian Ocean.

TABLE 2—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 1, THE EAST OF JAPAN

Species	Stock name [1]	Stock abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	WNP	9,250	0.00001	0.00001	.....	0.00001	EN
Bryde's whale	WNP	20,501	0.0006	0.0006	0.0006	0.0006	NL
Common minke whale	WNP "OE"	25,049	0.0022	0.0022	0.0022	0.0022	NL
Fin whale	WNP	9,250	.....	.....	0.0002	0.0002	EN
Humpback whale	WNP stock and DPS	1,328	.....	.....	0.00036	0.00036	EN
North Pacific right whale	WNP	922	0.00001	0.00001	.....	.....	EN
Sei whale	NP	7,000	0.0006	0.0006	0.0006	0.0006	EN
Baird's beaked whale	WNP	5,688	.....	.....	0.0029	0.0029	NL
Common dolphin	WNP	3,286,163	0.0761	0.0761	0.0761	0.0761	NL
Common bottlenose dolphin	WNP Northern Offshore	100,281	0.0171	0.0171	0.0171	0.0171	NL
Cuvier's beaked whale	WNP	90,725	0.0031	0.0031	0.0031	0.0031	NL
Dall's porpoise (*truei*)	WNP *truei*	178,157	0.0390	0.0520	.....	0.0520	NL
False killer whale	WNP	16,668	0.0036	0.0036	0.0036	0.0036	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	0.0005	0.0005	0.0005	NL
Harbor porpoise	WNP	31,046	0.0190	0.0190	0.0190	0.0190	NL
Hubbs beaked whale	NP	22,799	0.0005	0.0005	0.0005	0.0005	NL
Killer whale	WNP	12,256	0.0001	0.0001	0.0001	0.0001	NL
Kogia spp. [5]	WNP	350,553	0.0031	0.0031	0.0031	0.0031	NL
Pacific white-sided dolphin	NP	931,000	0.0082	0.0082	0.0082	0.0082	NL
Pantropical spotted dolphin	WNP	130,002	.....	.....	0.0259	0.0259	NL
Pygmy killer whale	WNP	30,214	0.0021	0.0021	0.0021	0.0021	NL
Risso's dolphin	WNP	143,374	0.0097	0.0097	0.0097	0.0097	NL
Rough-toothed dolphin	WNP	5,002	0.00224	0.00224	0.00224	0.00224	NL
Short-finned pilot whale	WNP Northern	20,884	0.0128	0.0128	0.0128	0.0128	NL
Sperm whale	NP	102,112	0.00123	0.00123	0.00123	0.00123	EN
Spinner dolphin	WNP	1,015,059	.....	.....	0.00083	0.00083	NL
Stejneger's beaked whale	WNP	8,000	0.0005	0.0005	0.0005	0.0005	NL
Striped dolphin	WNP Northern Offshore	497,725	0.0111	0.0111	0.0111	0.0111	NL
Northern fur seal	WP	503,609	0.368	0.158	.....	.....	.....

[1] NP=north Pacific; OE=Offshore Japan; WP=western Pacific; WNP=western north Pacific.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the model area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.
[5] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp. as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 3—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 2, NORTH PHILIPPINE SEA

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	WNP	9,250	0.00001	0.00001	.....	0.00001	EN
Bryde's whale	WNP	20,501	0.0006	0.0006	0.0006	0.0006	NL
Common minke whale	WNP "OE"	25,049	0.0044	0.0044	0.0044	0.0044	NL
Fin whale	WNP	9,250	0.0002	0.0002	.....	.....	EN
Humpback whale	WNP and DPS	1,328	0.00089	0.00089	.....	.00089	EN
North Pacific right whale	WNP	922	0.00001	0.00001	.....	.....	EN
Omura's whale	WNP	1,800	0.00004	0.00004	0.00004	0.00004	NL
Blainville's beaked whale	WNP	8,032	0.0005	0.0005	0.0005	0.0005	NL
Common dolphin	WNP	3,286,163	0.0562	0.0562	0.0562	0.0562	NL
Common bottlenose dolphin	Japanese Coastal	3,516	0.0146	0.0146	0.0146	0.0146	NL
Cuvier's beaked whale	WNP	90,725	0.0054	0.0054	0.0054	0.0054	NL
False killer whale	WNP	16,668	0.0029	0.0029	0.0029	0.0029	NL
Fraser's dolphin	WNP	220,789	0.0069	0.0069	0.0069	0.0069	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	0.0005	0.0005	0.0005	NL
Killer whale	WNP	12,256	0.00009	0.00009	0.00009	0.00009	NL
Kogia spp. [5]	WNP	350,553	0.0031	0.0031	0.0031	0.0031	NL
Longman's beaked whale	WNP	7,619	0.00025	0.00025	0.00025	0.00025	NL
Melon-headed whale	WNP	56,213	0.00428	0.00428	0.00428	0.00428	NL
Pacific white-sided dolphin	NP	931,000	0.0119	0.0119	.....	.....	NL
Pantropical spotted dolphin	WNP	130,002	0.0137	0.0137	0.0137	0.0137	NL
Pygmy killer whale	WNP	30,214	0.0021	0.0021	0.0021	0.0021	NL
Risso's dolphin	WNP	143,374	0.0106	0.0106	0.0106	0.0106	NL
Rough-toothed dolphin	WNP	5,002	0.00224	0.00224	0.00224	0.00224	NL
Short-finned pilot whale	WNP Southern	31,396	0.0153	0.0153	0.0153	0.0153	NL
Sperm whale	NP	102,112	0.00123	0.00123	0.00123	0.00123	EN
Spinner dolphin	WNP	1,015,059	0.00083	0.00083	0.00083	0.00083	NL
Striped dolphin	Japanese Coastal	19,631	0.0329	0.0329	0.0329	0.0329	NL

[1] NP=north Pacific; OE=Offshore Japan; WNP=western north Pacific.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the mission area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.

[5] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp. as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 4—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 3, WEST PHILIPPINE SEA

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	WNP	9,250	0.00001	0.00001	.....	0.00001	EN
Bryde's whale	WNP	20,501	0.0006	0.0006	0.0006	0.0006	NL
Common minke whale	WNP "OE"	25,049	0.0033	0.0033	0.0033	0.0033	NL
Fin whale	WNP	9,250	0.0002	0.0002	.....	.....	EN
Humpback whale	WNP and DPS	1,328	0.00089	0.00089	.....	0.00089	EN
Omura's whale	WNP	1,800	0.00004	0.00004	0.00004	0.00004	NL
Blainville's beaked whale	WNP	8,032	0.0005	0.0005	0.0005	0.0005	NL
Common dolphin	WNP	3,286,163	0.1158	0.1158	0.1158	0.1158	NL
Common bottlenose dolphin	WNP Southern Offshore	40,769	0.0146	0.0146	0.0146	0.0146	NL
Cuvier's beaked whale	WNP	90,725	0.0003	0.0003	0.0003	0.0003	NL
Deraniyagala's beaked whale	NP	22,799	0.0005	0.0005	0.0005	0.0005	NL
False killer whale	WNP	16,668	0.0029	0.0029	0.0029	0.0029	NL
Fraser's dolphin	WNP	220,789	0.0069	0.0069	0.0069	0.0069	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	0.0005	0.0005	0.0005	NL
Killer whale	WNP	12,256	0.00009	0.00009	0.00009	0.00009	NL
Kogia spp. [5]	WNP	350,553	0.0017	0.0017	0.0017	0.0017	*
Longman's beaked whale	WNP	7,619	0.00025	0.00025	0.00025	0.00025	NL
Melon-headed whale	WNP	56,213	0.00428	0.00428	0.00428	0.00428	NL
Pantropical spotted dolphin	WNP	130,002	0.0137	0.0137	0.0137	0.0137	NL
Pygmy killer whale	WNP	30,214	0.0021	0.0021	0.0021	0.0021	NL
Risso's dolphin	WNP	143,374	0.0106	0.0106	0.0106	0.0106	NL
Rough-toothed dolphin	WNP	5,002	0.00224	0.00224	0.00224	0.00224	NL
Short-finned pilot whale	WNP Southern	31,396	0.0076	0.0076	0.0076	0.0076	NL
Sperm whale	NP	102,112	0.00123	0.00123	0.00123	0.00123	EN
Spinner dolphin	WNP	1,015,059	0.00083	0.00083	0.00083	0.00083	NL
Striped dolphin	WNP Southern Offshore	52,682	0.0164	0.0164	0.0164	0.0164	NL

[1] NP=north Pacific; OE=Offshore Japan; WNP=western north Pacific.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the model area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.
[5] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp. as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 5—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 4, OFFSHORE GUAM

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	WNP	9,250	0.00001	0.00001	.....	0.00001	EN
Bryde's whale	WNP	20,501	0.0004	0.0004	0.0004	0.0004	NL
Common minke whale	WNP "OE"	25,049	0.00015	0.00015	0.00015	0.00015	NL
Fin whale	WNP	9,250	0.00001	0.00001	.....	0.00001	EN
Humpback whale	WNP and DPS	1,328	0.00089	0.00089	.....	0.00089	EN
Omura's whale	WNP	1,800	0.00004	0.00004	0.00004	0.00004	NL
Sei whale	NP	7,000	0.00029	0.00029	.....	0.00029	EN
Blainville's beaked whale	WNP	8,032	0.00086	0.00086	0.00086	0.00086	NL
Common bottlenose dolphin	WNP Southern Offshore	40,769	0.00899	0.00899	0.00899	0.00899	NL
Cuvier's beaked whale	WNP	90,725	0.0003	0.0003	0.0003	0.0003	NL
Deraniyagala's beaked whale	NP	22,799	0.00093	0.00093	0.00093	0.00093	NL
Dwarf sperm whale	WNP	350,553	0.00714	0.00714	0.00714	0.00714	NL
False killer whale	WNP	16,668	0.00111	0.00111	0.00111	0.00111	NL
Fraser's dolphin	CNP	16,992	0.02104	0.02104	0.02104	0.02104	NL
Ginkgo-toothed beaked whale	NP	22,799	0.00093	0.00093	0.00093	0.00093	NL
Killer whale	WNP	12,256	0.00006	0.00006	0.00006	0.00006	NL
Longman's beaked whale	WNP	7,619	0.00311	0.00311	0.00311	0.00311	NL
Melon-headed whale	WNP	56,213	0.00428	0.00428	0.00428	0.00428	NL
Pantropical spotted dolphin	WNP	130,002	0.0226	0.0226	0.0226	0.0226	NL
Pygmy killer whale	WNP	30,214	0.00014	0.00014	0.00014	0.00014	NL
Pygmy sperm whale	WNP	350,553	0.00291	0.00291	0.00291	0.00291	NL
Risso's dolphin	WNP	143,374	0.00474	0.00474	0.00474	0.00474	NL
Rough-toothed dolphin	WNP	5,002	0.00185	0.00185	0.00185	0.00185	NL
Short-finned pilot whale	WNP Southern	31,396	0.00797	0.00797	0.00797	0.00797	NL
Sperm whale	NP	102,112	0.00123	0.00123	0.00123	0.00123	EN
Spinner dolphin	WNP	1,015,059	0.00083	0.00083	0.00083	0.00083	NL
Striped dolphin	WNP Southern Offshore	52,682	0.00616	0.00616	0.00616	0.00616	NL

[1] CNP=central north Pacific; NP=north Pacific; OE=Offshore Japan; WNP=western north Pacific.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the mission area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.

TABLE 6—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 5, SEA OF JAPAN

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA Status [4]
			Winter	Spring	Summer	Fall	
Bryde's whale	WNP	20,501	0.0001	0.0001	0.0001	0.0001	NL
Common minke whale	WNP "JW" Stock	2,611	0.00016	0.00016	0.00016	0.00016	NL
Fin whale	WNP	9,250	0.0009	0.0009	.....	0.0009	EN
North Pacific right whale	WNP	922	0.00001	0.00001	.....	.....	EN
Omura's whale	WNP	1,800	0.00004	0.00004	0.00004	0.00004	NL
Western North Pacific gray whale	WNP Western DPS	140	0.00001	0.00001	0.00001	0.00001	EN [5]
Baird's beaked whale	WNP	5,688	0.0003	0.0003	.....	0.0003	NL
Common dolphin	WNP	279,182	0.1158	0.1158	0.1158	0.1158	NL
Common bottlenose dolphin	IA	105,138	0.00077	0.00077	0.00077	0.00077	NL
Cuvier's beaked whale	WNP	90,725	0.0031	0.0031	0.0031	0.0031	NL
Dall's porpoise	SOJ *dalli*	173,638	0.0520	0.0520	.....	0.0520	NL
False killer whale	IA	9,777	0.0027	0.0027	0.0027	0.0027	NL
Harbor porpoise	WNP	31,046	0.0190	0.0190	.....	0.0190	NL
Killer whale	WNP	12,256	0.00009	0.00009	0.00009	0.00009	NL
Kogia spp [6]	WNP	350,553	0.0017	0.0017	0.0017	0.0017	*
Pacific white-sided dolphin	NP	931,000	0.0030	0.0030	.....	.....	NL
Risso's dolphin	IA	143,374	0.0073	0.0073	0.0073	0.0073	NL
Rough-toothed dolphin	WNP	5,002	0.00224	0.00224	0.00224	0.00224	NL
Sperm whale	NP	102,112	0.00123	0.00123	0.00123	0.00123	EN
Spinner dolphin	WNP	1,015,059	.....	.....	0.00083	0.00083	NL
Stejneger's beaked whale	WNP	8,000	0.0005	0.0005	0.0005	0.0005	NL
Northern fur seal	WP	503,609	0.368	0.158	.....	.....	
Spotted seal	Southern and DPS	3,500	0.00001	0.00001	0.00001	0.00001	T

[1] IA=Inshore Archipelago; JW=Sea of Japan (minke); NP=north Pacific; SOJ=Sea of Japan; WNP=western north Pacific.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the model area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.
[5] Only the western Pacific population of gray whale is endangered under the ESA.
[6] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 7—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 6, EAST CHINA SEA

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Bryde's whale	ECS	137	0.0003	0.0003	0.0003	0.0003	NL
Common minke whale	YS	4,492	0.0018	0.0018	0.0018	0.0018	NL
Fin whale	ECS	500	0.0002	0.0002	0.0002	0.0002	EN
North Pacific right whale	WNP	922	0.00001	0.00001	.....	.....	EN
Omura's whale	WNP	1,800	0.00004	0.00004	0.00004	0.00004	NL
Western North Pacific gray whale	WNP and Western DPS	140	0.00001	0.00001	.....	0.00001	EN [5]
Blainville's beaked whale	WNP	8,032	0.0005	0.0005	0.0005	0.0005	NL
Common dolphin	WNP	279,182	0.1158	0.1158	0.1158	0.1158	NL
Common bottlenose dolphin	IA	105,138	0.00077	0.00077	0.00077	0.00077	NL
Cuvier's beaked whale	WNP	90,725	0.0003	0.0003	0.0003	0.0003	NL
False killer whale	IA	9,777	0.00111	0.00111	0.00111	0.00111	NL
Fraser's dolphin	WNP	220,789	0.00694	0.00694	0.00694	0.00694	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	0.0005	0.0005	0.0005	NL
Killer whale	WNP	12,256	0.00009	0.00009	0.00009	0.00009	NL
Kogia spp [6]	WNP	350,553	0.0017	0.0017	0.0017	0.0017	*
Longman's beaked whale	WNP	7,619	0.00025	0.00025	0.00025	0.00025	NL
Melon-headed whale	WNP	56,213	0.00428	0.00428	0.00428	0.00428	NL
Pacific white-sided dolphin	NP	931,000	0.0028	0.0028	.....	.....	NL
Pantropical spotted dolphin	WNP	130,002	0.01374	0.01374	0.01374	0.01374	NL
Pygmy killer whale	WNP	30,214	0.00014	0.00014	0.00014	0.00014	NL
Risso's dolphin	IA	143,374	0.0106	0.0106	0.0106	0.0106	NL
Rough-toothed dolphin	WNP	5,002	0.00224	0.00224	0.00224	0.00224	NL
Sperm whale	NP	102,112	0.00123	0.00123	0.00123	0.00123	EN
Spinner dolphin	WNP	1,015,059	0.00083	0.00083	0.00083	0.00083	NL
Spotted seal	Southern and DPS	1,000	0.00001	0.00001	0.00001	0.00001	T

[1] ECS=East China Sea; IA=Inshore Archipelago; NP=north Pacific; WNP=western north Pacific; YS=Yellow Sea.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the mission area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.
[5] Only the western Pacific population of gray whale is endangered under the ESA.
[6] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp. as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 8—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 7, SOUTH CHINA SEA

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Springer	Summer	Fall	
Bryde's whale	WNP	20,501	0.0006	0.0006	0.0006	0.0006	NL
Common minke whale	YS	4,492	0.0018	0.0018	0.0018	0.0018	NL
Fin whale	WNP	9,250	0.0002	0.0002	.....	0.0002	EN
Humpback whale	WNP and DPS	1,328	0.00036	0.00036	.....	0.00036	EN
North Pacific right whale	WNP	922	0.00001	0.00001	.....	.....	EN
Omura's whale	WNP	1,800	0. 00004	0. 00004	0. 00004	0. 00004	NL
Western North Pacific gray whale	WNP and Western DPS	140	0.00001	0.00001	.....	0.00001	EN [5]
Blainville's beaked whale	WNP	8,032	0.0005	0.0005	0.0005	0.0005	NL
Common dolphin	WNP	279,182	0.1158	0.1158	0.1158	0.1158	NL
Common bottlenose dolphin	IA	105,138	0.00077	0.00077	0.00077	0.00077	NL
Cuvier's beaked whale	WNP	90,725	0.0003	0.0003	0.0003	0.0003	NL
Deraniyagala's beaked whale	NP	22,799	0.0005	0.0005	0.0005	0.0005	NL
False killer whale	IA	9,777	0.00111	0.00111	0.00111	0.00111	NL
Fraser's dolphin	WNP	220,789	0.00694	0.00694	0.00694	0.00694	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	0.0005	0.0005	0.0005	NL
Killer whale	WNP	12,256	0.00009	0.00009	0.00009	0.00009	NL
Kogia spp [6]	WNP	350,553	0.0017	0.0017	0.0017	0.0017	*
Longman's beaked whale	WNP	7,619	0.00025	0.00025	0.00025	0.00025	NL
Melon-headed whale	WNP	56,213	0.00428	0.00428	0.00428	0.00428	NL
Pantropical spotted dolphin	WNP	130,002	0.01374	0.01374	0.01374	0.01374	NL
Pygmy killer whale	WNP	30,214	0.00014	0.00014	0.00014	0.00014	NL
Risso's dolphin	IA	143,374	0.0106	0.0106	0.0106	0.0106	NL
Rough-toothed dolphin	WNP	5,002	0.00224	0.00224	0.00224	0.00224	NL
Short-finned pilot whale	WNP Southern	31,396	0.00159	0.00159	0.00159	0.00159	NL
Sperm whale	NP	102,112	0.0012	0.0012	0.0012	0.0012	EN
Spinner dolphin	WNP	1,015,059	0.00083	0.00083	0.00083	0.00083	NL
Striped dolphin	WNP Southern Offshore	52,682	0.00584	0.00584	0.00584	0.00584	NL

[1] IA=Inshore Archipelago; NP=north Pacific; WNP=western north Pacific; YS=Yellow Sea.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the model area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.
[5] Only the western Pacific population of gray whale is endangered under the ESA.
[6] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp. as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 9—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 8, OFFSHORE JAPAN 25° TO 40° N

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	WNP	9,250	0.00001	0.00001	.....	0.00001	EN
Bryde's whale	WNP	20,501	0.0003	0.0003	0.0003	0.0003	NL
Common minke whale	WNP "OE"	25,049	0.0003	0.0003	0.0003	0.0003	NL
Fin whale	WNP	9,250	.....	.....	0.0001	0.0001	EN
Humpback whale	WNP and DPS	1,328	.....	.....	0.00036	0.00036	EN
Sei whale	NP	7,000	.....	0.00029	0.00029	0.00029	EN
Baird's beaked whale	WNP	5,688	0.0001	0.0001	0.0001	0.0001	NL
Blainville's beaked whale	WNP	8,032	0.0007	0.0007	0.0007	0.0007	NL
Common dolphin	WNP	3,286,163	0.0863	0.0863	0.0863	0.0863	NL
Common bottlenose dolphin	WNP Northern Offshore	100,281	0.00077	0.00077	0.00077	0.00077	NL
Cuvier's beaked whale	WNP	90,725	0.00374	0.00374	0.00374	0.00374	NL
Dall's porpoise	WNP *dalli*	162,000	0.0390	0.0520	.....	0.0520	.....
Dwarf sperm whale	WNP	350,553	0.0043	0.0043	0.0043	0.0043	NL
False killer whale	WNP	16,668	0.0036	0.0036	0.0036	0.0036	NL
Hubb's beaked whale	NP	22,799	0.0005	0.0005	0.0005	0.0005	NL
Killer whale	WNP	12,256	0.00009	0.00009	0.00009	0.00009	NL
Longman's beaked whale	WNP	7,619	0.00025	0.00025	0.00025	0.00025	NL
Melon-headed whale	WNP	56,213	0.0027	0.0027	0.0027	0.0027	NL
Mesoplodon spp [5]	WNP	22,799	0.0005	0.0005	0.0005	0.0005	NL
Northern right whale dolphin	NP	68,000	0.00001	0.00001	.....	0.00001	NL
Pacific white-sided dolphin	NP	931,000	0.0048	0.0048	0.0048	0.0048	NL
Pantropical spotted dolphin	WNP	130,002	0.0113	0.0113	0.0113	0.0113	NL
Pygmy killer whale	WNP	30,214	0.0001	0.0001	0.0001	0.0001	NL
Pygmy sperm whale	WNP	350,553	0.0018	0.0018	0.0018	0.0018	NL
Risso's dolphin	WNP	143,374	0.0005	0.0005	0.0005	0.0005	NL
Rough-toothed dolphin	WNP	5,002	0.0019	0.0019	0.0019	0.0019	NL
Short-finned pilot whale	WNP Northern	20,884	0.0021	0.0021	0.0021	0.0021	NL
Sperm whale	NP	102,112	0.0022	0.0022	0.0022	0.0022	EN
Spinner dolphin	WNP	1,015,059	0.0019	0.0019	0.0019	0.0019	NL
Stejneger's beaked whale	WNP	8,000	0.0005	0.0005	0.0005	0.0005	NL
Striped dolphin	WNP Northern Offshore	497,725	0.0058	0.0058	0.0058	0.0058	NL
Hawaiian monk seal	Hawaii	1,427	0.00001	0.00001	0.00001	0.00001	EN

TABLE 9—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 8, OFFSHORE JAPAN 25° TO 40° N—Continued

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Northern fur seal	WP	503,609	0.0123	.....	.....	.....	NL

[1] NP=north Pacific; OE=Offshore Japan; WNP=western north Pacific; WP=Western Pacific.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the mission area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.
[5] No methods are available to distinguish between the species of *Mesoplodon* beaked whales in the WNP stocks (Blainville's beaked whale (*M. densirostris*), Perrin's beaked whale (*M. perrini*), Lesser beaked whale (*M. peruvianus*), Stejneger's beaked whale (*M. stejnegeri*), Gingko-toothed beaked whale (*M. gingkodens*), and Hubbs' beaked whale (*M. carlhubbsi*)) when observed during at-sea surveys (Carretta *et al.,* 2018). As reported in Ferguson and Barlow, 2001 and 2003, data on these species were pooled. These six species are managed as one unit.

TABLE 10—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 9, OFFSHORE JAPAN 10° TO 25° N

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	WNP	9,250	0.00001	0.00001	.....	0.00001	EN
Bryde's whale	WNP	20,501	0.0003	0.0003	0.0003	0.0003	NL
Fin whale	WNP	9,250	0.00001	0.00001	.....	.....	EN
Humpback whale	WNP and DPS	1,328	0.00036	0.00036	.....	0.00036	EN
Omura's whale	WNP	1,800	0.00004	0.00004	0.00004	0.00004	NL
Sei whale	NP	7,000	0.0029	.....	.....	0.0029	EN
Blainville's beaked whale	WNP	8,032	0.0007	0.0007	0.0007	0.0007	NL
Common bottlenose dolphin	WNP Southern Offshore	40,769	0.00077	0.00077	0.00077	0.00077	NL
Cuvier's beaked whale	WNP	90,725	0.00374	0.00374	0.00374	0.00374	NL
Deraniyagala's beaked whale	NP	22,799	0.00093	0.00093	0.00093	0.00093	NL
Dwarf sperm whale	WNP	350,553	0.0043	0.0043	0.0043	0.0043	NL
False killer whale	WNP	16,668	0.00057	0.00057	0.00057	0.00057	NL
Fraser's dolphin	CNP	16,992	0.00251	0.00251	0.00251	0.00251	NL
Ginkgo-toothed beaked whale	NP	22,799	0.00093	0.00093	0.00093	0.00093	NL
Killer whale	WNP	12,256	0.00009	0.00009	0.00009	0.00009	NL
Longman's beaked whale	WNP	7,619	0.00025	0.00025	0.00025	0.00025	NL
Melon-headed whale	WNP	56,213	0.00267	0.00267	0.00267	0.00267	NL
Pantropical spotted dolphin	WNP	130,002	0.01132	0.01132	0.01132	0.01132	NL
Pygmy killer whale	WNP	30,214	0.00006	0.00006	0.00006	0.00006	NL
Pygmy sperm whale	WNP	350,553	0.00176	0.00176	0.00176	0.00176	NL
Risso's dolphin	WNP	143,374	0.00046	0.00046	0.00046	0.00046	NL
Rough-toothed dolphin	WNP	5,002	0.00185	0.00185	0.00185	0.00185	NL
Short-finned pilot whale	WNP Southern	31,396	0.00211	0.00211	0.00211	0.00211	NL
Sperm whale	NP	102,112	0.00222	0.00222	0.00222	0.00222	EN
Spinner dolphin	WNP	1,015,059	0.00187	0.00187	0.00187	0.00187	NL
Striped dolphin	WNP Southern Offshore	52,682	0.00584	0.00584	0.00584	0.00584	NL

[1] NP=north Pacific; CNP=central north Pacific; WNP=western north Pacific.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the model area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.

TABLE 11—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 10, NORTHERN HAWAII

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	CNP	133	0.00005	0.00005	.....	0.00005	EN
Bryde's whale	Hawaii	1,751	0.000085	0.000085	0.000085	0.000085	NL
Common minke whale	Hawaii	25,049	0.00423	0.00423	.....	0.00423	NL
Fin whale	Hawaii	154	0.00006	0.00006	.....	0.00006	EN
Humpback whale	CNP and Hawaii DPS	10,103	0.00529	0.00529	.....	0.00529	NL
Sei whale	Hawaii	391	0.00016	0.00016	.....	0.00016	EN
Blainville's beaked whale	Hawaii	2,105	0.00086	0.00086	0.00086	0.00086	NL
Common bottlenose dolphin	Hawaii pelagic	21,815	0.00118	0.00118	0.00118	0.00118	NL
	Kauai/Niihau	184	0.065	0.065	0.065	0.065	NL
	4 Islands	191	0.017	0.017	0.017	0.017	NL
	Oahu	743	0.187	0.187	0.187	0.187	NL
	Hawaii Island	128	0.028	0.028	0.028	0.028	NL
Cuvier's beaked whale	Hawaii	723	0.0003	0.0003	0.0003	0.0003	NL
Dwarf sperm whale	Hawaii	17,519	0.00714	0.00714	0.00714	0.00714	NL
False killer whale	Hawaii-Pelagic	1,540	0.0006	0.0006	0.0006	0.0006	NL
	Main HI Islands Insular and DPS	167	0.0008	0.0008	0.0008	0.0008	EN
	NW HI Islands	617	0.0006	0.0006	0.0006	0.0006	NL
Fraser's dolphin	Hawaii	51,491	0.02104	0.02104	0.02104	0.02104	NL

TABLE 11—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 10, NORTHERN HAWAII—Continued

Species	Stock name [1]	Abundance [2]	Density (animals/km [2]) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Killer whale	Hawaii	146	0.00006	0.00006	0.00006	0.00006	NL
Longman's beaked whale	Hawaii	7,619	0.00311	0.00311	0.00311	0.00311	NL
Melon-headed whale	Hawaiian Islands	8,666	0.002	0.0020	0.0020	0.0020	NL
	Kohala Resident	447	0.1000	0.1000	0.1000	0.1000	NL
Pantropical spotted dolphin	Hawaiian Pelagic	55,795	0.00369	0.00369	0.00369	0.00369	NL
	Hawaiian Island	220	0.061	0.061	0.061	0.061	NL
	Oahu	220	0.072	0.072	0.072	0.072	NL
	4 Islands	220	0.061	0.061	0.061	0.061	NL
Pygmy killer whale	Hawaii	10,640	0.00435	0.00435	0.00435	0.00435	NL
Pygmy sperm	Hawaii	7,138	0.0029	0.0029	0.0029	0.0029	NL
Risso's dolphin	Hawaii	11,613	0.00474	0.00474	0.00474	0.00474	NL
Rough-toothed dolphin	Hawaii	72,528	0.00224	0.00224	0.00224	0.00224	NL
Short-finned pilot whale	Hawaii	19,503	0.00459	0.00459	0.00459	0.00459	NL
Sperm whale	Hawaii	4,559	0.00158	0.00158	0.00158	0.00158	EN
Spinner dolphin	Hawaii Pelagic	3,351	0.00159	0.00159	0.00159	0.00159	NL
	Kauai/Niihau	601	0.097	0.097	0.097	0.097	NL
	Hawaiian Island	631	0.066	0.066	0.066	0.066	NL
	Oahu/4 Islands	355	0.023	0.023	0.023	0.023	NL
	Kure/Midway Atoll	260	0.0070	0.0070	0.0070	0.0070	NL
	Pearl and Hermes Reef	300	0.0070	0.0070	0.0070	0.0070	NL
Striped dolphin	Hawaii	61,201	0.00385	0.00385	0.00385	0.00385	NL
Hawaiian monk seal	Hawaii	1,427	0.00004	0.00004	0.00004	0.00004	EN

[1] CNP=central north Pacific.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the mission area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.

TABLE 12—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 11, SOUTHERN HAWAII

Species	Stock name [1]	Abundance [2]	Density (animals/km [2]) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	CNP	133	0.00005	0.00005	.....	0.00005	EN
Bryde's whale	Hawaii	798	0.00012	0.00012	0.00012	0.00012	NL
Common minke whale	Hawaii	25,049	0.00423	0.00423	.....	0.00423	NL
Fin whale	Hawaii	154	0.00006	0.00006	.....	0.00006	EN
Humpback whale	CNP/Hawaii DPS	10,103	0.00631	0.00631	.....	0.00631	NL
Sei whale	Hawaii	391	0.00016	0.00016	.....	0.00016	EN
Blainville's beaked whale	Hawaii	2,105	0.00086	0.00086	0.00086	0.00086	NL
Common bottlenose dolphin	Hawaii Pelagic	21,815	0.00126	0.00126	0.00126	0.00126	NL
	Oahu	743	0.187	0.187	0.187	0.187	NL
	4 Islands	191	0.017	0.017	0.017	0.017	NL
	Hawaii Island	128	0.028	0.028	0.028	0.028	NL
	Kauai/Niihau	184	0.065	0.065	0.065	0.065	NL
Cuvier's beaked whale	Hawaii	723	0.0003	0.0003	0.0003	0.0003	NL
Deraniyagala's beaked whale	NP	22,799	0.00093	0.00093	0.00093	0.00093	NL
Dwarf sperm whale	Hawaii	17,519	0.00714	0.00714	0.00714	0.00714	NL
False killer whale	Hawaii-Pelagic	1,540	0.00086	0.00086	0.00086	0.00086	NL
	Main Hawaiian Island Insular	167	0.0008	0.0008	0.0008	0.0008	EN
Fraser's dolphin	Hawaii	51,491	0.02104	0.02104	0.02104	0.02104	NL
Killer whale	Hawaii	146	0.00006	0.00006	0.00006	0.00006	NL
Longman's beaked whale	Hawaii	7,619	0.00311	0.00311	0.00311	0.00311	NL
Melon-headed whale	Hawaiian Islands	8,666	0.0020	0.0020	0.0020	0.0020	NL
	Kohala Resident	447	0.1000	0.1000	0.1000	0.1000	NL
Pantropical spotted dolphin	Hawaiian Pelagic	55,795	0.00541	0.00541	0.00541	0.00541	NL
	Hawaii Island	220	0.061	0.061	0.061	0.061	NL
	Oahu	220	0.072	0.072	0.072	0.072	NL
	4 Islands	220	0.061	0.061	0.061	0.061	NL
Pygmy killer whale	Hawaii	10,640	0.00435	0.00435	0.00435	0.00435	NL
Pygmy sperm whale	Hawaii	7,138	0.0029	0.0029	0.0029	0.0029	NL
Risso's dolphin	Hawaii	11,613	0.00474	0.00474	0.00474	0.00474	NL
Rough toothed dolphin	Hawaii	75,528	0.00257	0.00257	0.00257	0.00257	NL
Short-finned pilot whale	Hawaii	19,503	0.00549	0.00549	0.00549	0.00549	NL
Sperm whale	Hawaii	4,559	0.00131	0.00131	0.00131	0.00131	EN
Spinner dolphin	Hawaii Pelagic	3,351	0.00348	0.00348	0.00348	0.00348	NL
	Oahu/4-Islands	601	0.023	0.023	0.023	0.023	NL
	Hawaii Island	631	0.066	0.066	0.066	0.066	NL
	Kauai/Niihau	355	0.097	0.097	0.097	0.097	
Striped dolphin	Hawaii	61,201	0.00475	0.00475	0.00475	0.00475	NL
Hawaiian monk seal	Hawaii	1,427	0.00004	0.00004	0.00004	0.00004	EN

[1] CNP=central north Pacific; NP=north Pacific.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.

[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the model area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.

TABLE 13—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 12, OFFSHORE SRI LANKA

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	NIND	3,691	0.00004	0.00004	0.00004	0.00004	EN
Bryde's whale	NIND	9,176	0.00041	0.00041	0.00041	0.00041	NL
Common minke whale	IND	257,000	0.00001	0.00001	0.00001	0.00001	NL
Fin whale	IND	1,846	0.00001	0.00001	0.00001	0.00001	EN
Omura's whale	NIND	9,176	0.00041	0.00041	0.00041	0.00041	NL
Sei whale	NIND	9,176	0.00041	0.00041	0.00041	0.00041	EN
Blainville's beaked whale	IND	16,867	0.00105	0.00105	0.00105	0.00105	NL
Common dolphin	IND	1,819,982	0.00513	0.00516	0.00541	0.00538	NL
Common bottlenose dolphin	NIND	785,585	0.04839	0.04829	0.04725	0.04740	NL
Cuvier's beaked whale	NIND	27,272	0.00506	0.00508	0.00505	0.00505	NL
Deraniyagala's beaked whale	IND	16,867	0.00513	0.00516	0.00541	0.00538	NL
Dwarf sperm whale	IND	10,541	0.00005	0.00005	0.00005	0.00005	NL
False killer whale	IND	144,188	0.00024	0.00024	0.00024	0.00024	NL
Fraser's dolphin	IND	151,554	0.00207	0.00207	0.00207	0.00207	NL
Indo-Pacific bottlenose dolphin	IND	7,850	0.00048	0.00048	0.00047	0.00047	NL
Killer whale	IND	12,593	0.00697	0.00155	0.00693	0.00694	NL
Longman's beaked whale	IND	16,867	0.00513	0.00516	0.00541	0.00538	NL
Melon-headed whale	IND	64,600	0.00921	0.00920	0.00937	0.00936	NL
Pantropical spotted dolphin	IND	736,575	0.00904	0.00904	0.00904	0.00904	NL
Pygmy killer whale	IND	22,029	0.00138	0.00137	0.00152	0.00153	NL
Pygmy sperm whale	IND	10,541	0.00001	0.00001	0.00001	0.00001	NL
Risso's dolphin	IND	452,125	0.08641	0.08651	0.08435	0.08466	NL
Rough-toothed dolphin	IND	156,690	0.00071	0.00071	0.00071	0.00071	NL
Short-finned pilot whale	IND	268,751	0.03219	0.03228	0.03273	0.03279	NL
Sperm whale	NIND	24,446	0.00129	0.00118	0.00126	0.00121	EN
Spinner dolphin	IND	634,108	0.00678	0.00678	0.00678	0.00678	NL
Striped dolphin	IND	674,578	0.14601	0.14629	0.14780	0.14788	NL

[1] IND=Indian Ocean; NIND=northern Indian Ocean.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the mission area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.

TABLE 14—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 13, ANDAMAN SEA

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	NIND	3,691	0.00003	0.00003	0.00003	0.00003	EN
Bryde's whale	NIND	9,176	0.00038	0.000036	0.00037	0.00037	NL
Common minke whale	IND	257,000	.....	0.00001	0.00968	0.00001	NL
Fin whale	IND	1,846	0.00001	0.00001	.....	0.00001	EN
Omura's whale	NIND	9,176	0.00038	0.00036	0.00037	0.00037	NL
Blainville's beaked whale	IND	16,867	0.00094	0.00089	0.00094	0.00099	NL
Common bottlenose dolphin	NIND	785,585	0.07578	0.07781	0.07261	0.07212	NL
Cuvier's beaked whale	NIND	27,272	0.00466	0.00482	0.00480	0.00473	NL
Deraniyagala's beaked whale	IND	16,867	0.00094	0.00092	0.00097	0.00099	NL
Dwarf sperm whale	IND	10,541	0.00005	0.00006	0.00006	0.00005	NL
False killer whale	IND	144,188	0.00023	0.00023	0.00024	0.00023	NL
Fraser's dolphin	IND	151,554	0.00176	0.00179	0.00180	0.00180	NL
Ginkgo-toothed beaked whale	IND	16,867	0.00094	0.00092	0.00097	0.00099	NL
Indo-Pacific bottlenose dolphin	IND	7,850	0.00076	0.00078	0.00073	0.00072	NL
Killer whale	IND	12,593	0.00744	0.00178	0.00730	0.00734	NL
Longman's beaked whale	IND	16,867	0.00444	0.00429	0.00459	0.00440	NL
Melon-headed whale	IND	64,600	0.00884	0.00884	0.00878	0.00846	NL
Pantropical spotted dolphin	IND	736,575	0.00868	0.00841	0.00829	0.00873	NL
Pygmy killer whale	IND	22,029	0.00121	0.00113	0.00125	0.00131	NL
Pygmy sperm whale	IND	10,541	0.00001	0.00001	0.00001	0.00001	NL
Risso's dolphin	IND	452,125	0.09197	0.09215	0.09173	0.09366	NL
Rough-toothed dolphin	IND	156,690	0.00077	0.00078	0.00077	0.00074	NL
Short-finned pilot whale	IND	268,751	0.03354	0.03364	0.03543	0.03504	NL
Sperm whale	NIND	24,446	0.00109	0.00099	0.00107	0.00105	EN
Spinner dolphin	IND	634,108	0.00736	0.00711	0.00701	0.00726	NL
Striped dolphin	IND	674,578	0.14413	0.14174	0.14123	0.14402	NL

[1] IND=Indian Ocean; NIND=northern Indian Ocean.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the model area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.

TABLE 15—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 14, NORTHWESTERN AUSTRALIA

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Antarctic minke whale	ANT	90,000	.....	0.00001	0.00001	0.00001	NL
Blue whale/Pygmy blue whale	SIND	1,657	.....	0.00003	0.00003	0.00003	EN
Bryde's whale	SIND	13,854	0.00032	0.00032	0.00032	0.00032	NL
Common minke whale	IND	257,500	.....	0.01227	0.01929	0.01947	NL
Fin whale	SIND	38,185	0.00001	0.00099	0.00128	0.00121	EN
Humpback whale	Western Australia stock and DPS	13,640	.....	0.00007	0.00007	0.00007	NL
Omura's whale	SIND	13,854	0.00032	0.00032	0.00032	0.00032	NL
Sei whale	SIND	13,854	0.00001	0.00001	0.00001	0.00001	EN
Blainville's beaked whale	IND	16,867	0.00083	0.00083	0.00082	0.00083	NL
Common bottlenose dolphin	WAU	3,000	0.03630	0.03652	0.03459	0.03725	NL
Cuvier's beaked whale	SH	76,500	0.00399	0.00406	0.00402	0.00405	NL
Dwarf sperm whale	IND	10,541	0.00004	0.00004	0.00004	0.00004	NL
False killer whale	IND	144,188	0.00020	0.00020	0.00019	0.00020	NL
Fraser's dolphin	IND	151,554	0.00145	0.00148	0.00149	0.00147	NL
Killer whale	IND	12,593	0.00585	0.00435	0.00588	0.00580	NL
Longman's beaked whale	IND	16,867	0.00393	0.00393	0.00403	0.00412	NL
Melon-headed whale	IND	64,600	0.00717	0.00717	0.00635	0.00637	NL
Pantropical spotted dolphin	IND	736,575	0.00727	0.00727	0.00715	0.00746	NL
Pygmy killer whale	IND	22,029	0.00100	0.00104	0.00101	0.00097	NL
Risso's dolphin	IND	452,125	0.07152	0.07214	0.06944	0.07173	NL
Rough-toothed dolphin	IND	156,690	0.00059	0.00060	0.00059	0.00059	NL
Short-finned pilot whale	IND	268,751	0.02698	0.02759	0.02689	0.02716	NL
Southern bottlenose whale	IND	599,300	0.00083	0.00083	0.00082	0.00083	NL
Spade-toothed beaked whale	IND	16,867	0.00083	0.00083	0.00082	0.00083	NL
Sperm whale	SIND	24,446	0.00096	0.00087	0.00097	0.00092	EN
Spinner dolphin	IND	634,108	0.00561	0.00549	0.00568	0.00563	NL
Striped dolphin	IND	674,578	0.12018	0.12041	0.11680	0.11727	NL

[1] ANT=Antarctic; SIND=southern Indian Ocean; IND=Indian Ocean; SH=Southern Hemisphere; WAU=Western Australia.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the mission area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.

TABLE 16—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 15, NORTHEAST OF JAPAN

Species	Stock name [1]	Abundance [2]	Density (animals/km²) [3]				ESA status [4]
			Winter	Spring	Summer	Fall	
Blue whale	WNP	9,250	0.00001	0.00001	.....	0.00001	EN
Common minke whale	WNP "OE"	25,049	0.0022	0.0022	0.0022	0.0022	NL
Fin whale	WNP	9,250	.....	0.0002	0.0002	0.0002	EN
Humpback whale	WNP and DPS	1,328	.....	0.000498	0.000498	0.000498	EN
North Pacific right whale	WNP	922	.....	.....	0.00001	0.00001	EN
Sei whale	NP	7,000	.....	0.00029	0.00029	.....	EN
Western North Pacific gray whale	Western and DPS	140	.....	.....	0.00001	0.00001	EN
Baird's beaked whale	WNP	5,688	.....	0.0015	0.0029	0.0029	NL
Common dolphin	WNP	3,286,163	0.0863	0.0863	0.0863	0.0863	NL
Cuvier's beaked whale	WNP	90,725	0.0054	0.0054	0.0054	0.0054	NL
Dall's porpoise	WNP *dalli*	162,000	0.0390	0.0520	0.0650	0.0520	NL
Killer whale	WNP	12,256	0.0036	0.0036	0.0036	0.0036	NL
Pacific white-sided dolphin	NP	931,000	0.0048	0.0048	0.0048	0.0048	NL
Sperm whale	NP	102,112	0.0017	0.0022	0.0022	0.0022	EN
Stejneger's beaked whale	WNP	8,000	0.0005	0.0005	0.0005	0.0005	NL
Northern fur seal	Western Pacific	503,609	0.00689	0.01378	0.01378	0.01378	NL
Ribbon seal	NP	365,000	0.0904	0.0904	0.0452	0.0452	NL
Spotted seal	Alaska/Bering Sea DPS	461,625	.....	0.2770	0.1385	.....	NL
Steller sea lion	West-Asian and Western DPS	71,221	0.00001	0.00001	0.00001	0.00001	EN

[1] IND=Indian Ocean; NP=northern Pacific; WNP=western north Pacific; OE=Offshore Japan.
[2] Refer to Table 3–2 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 3–2 of the Navy's application for literature references associated with density estimates presented in this table. No value for density indicates that species is not expected to occur in the model area during that season.
[4] ESA Status: EN=Endangered; T=Threatened; NL=Not Listed.

Information on how the density and abundance stock estimates were derived for the selected mission sites is in the Navy's application (refer to section 3.2). These data are derived from the best available published source documentation and provide general area information for each model area with species-specific information on the animals that could occur in that area, including estimates for their stock, abundance, and density. The Navy developed the abundance and density estimates by first using estimates from line-transect surveys that occurred in or near each of the 15 model sites (*e.g.,* Bradford *et al.,* 2017). When density estimates were not available from a survey in the model area, the Navy extrapolated density estimates from a region with similar oceanographic

characteristics to that model area. For example, the eastern tropical Pacific has been extensively surveyed and provides a comprehensive understanding of marine mammals in temperate oceanic waters (Ferguson and Barlow, 2001, 2003). Density estimates for some model areas were also derived from the Navy's Marine Species Density Database (DoN, 2018). In addition, density estimates are usually not available for rare marine mammal species or for those that have been newly defined (*e.g.,* the Deraniyagala's beaked whale). For these species, the lowest density estimate of 0.0001 animals/square kilometer (0.0001 animals/km^2) was used in the take analysis to reflect the low probability of occurrence in a specific SURTASS LFA sonar model area. Further, the Navy pooled density estimates for species of the same genus if sufficient data were not available to compute a density for individual species or the species are difficult to distinguish at sea, which is often the case for beaked whales (*e.g., Mesoplodon* spp.), as well as the pygmy and dwarf sperm whales (*Kogia* spp.). Density estimates are available for species groups rather than the individual species for *Kogia* spp. in model areas 1, 2, 3, 5, 6, and 7 and for *Mesoplodon* spp. in model area 8, as the best available data (Ferguson and Barlow, 2001 and 2003) were reported as pooled data.

The Navy provides detailed descriptions of the distribution, abundance, diving behavior, life history, and hearing vocalization information for each affected marine mammal species with confirmed or possible occurrence within SURTASS LFA sonar study areas in section 4 (pages 4–1 through 4–44) of the application, which is available online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

Although not repeated in this document, NMFS has reviewed these data, determined them to be the best available scientific information for the proposed rulemaking, and considers this information part of the administrative record for this action. Additional information is available in NMFS' Marine Mammal Stock Assessment Reports, which may be viewed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* NMFS refers the public to Table 3–2 (pages 3–6 through 3–25) of the Navy's application for literature references associated with abundance and density estimates presented in these tables.

Brief Background on Sound, Marine Mammal Hearing, and Vocalization

Underwater Sound

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Sound frequency is measured in cycles per second, referred to as Hertz (Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds contain low frequencies. Frequency, or the ''pitch'' of a sound, 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 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).

Natural sounds in the ocean span a large range of frequencies: From earthquake noise at five Hz to harbor porpoise clicks at 150,000 Hz (150 kilohertz (kHz)). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic (typically below 20 Hz, which is considered the low frequency bound of human hearing) and ultrasonic (typically above 20,000 Hz, which is considered the upper bound of human hearing) sounds, respectively. A single sound may be made up of multiple frequencies. Sounds made up of only a small range of frequencies are called narrowband, and sounds with a broad range of frequencies are called broadband. Explosives are an example of a broadband sound source and tactical military sonars are an example of a narrowband sound source.

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 sound produced by LFA sonar. 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.

Sounds are often considered to fall into one of two general types: Impulsive and non-impulsive (described below). 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. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Impulsive 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. Impulsive 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-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, and vibratory pile driving. The duration of such sounds, as received at a distance,

can be greatly extended in a highly reverberant environment. Given the non-pulsed nature of the LFA sonar source, it is appropriate to consider it a non-impulsive source for estimation of permanent and temporary threshold shifts (PTS and TTS, respectively). The Navy derived the potential for Level B harassment directly from data obtained during experiments exposing marine mammals (mysticetes) to low frequency sonar. Refer to the ''Estimated Take'' section for more information regarding the estimation of take by harassment.

Metrics Used in This Document

This section includes a brief explanation of the sound measurement metrics frequently used in the discussions of acoustic effects in this document.

Sound Pressure Level

Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are decibels (dB) re: 1 μPa. SPL (in dB) = 20 log (pressure/reference pressure). SPL is an instantaneous measurement and can be expressed as the peak (pk), the peak-peak (p-p), or the root mean square (RMS). SPL does not directly take the duration of exposure to a sound into account, though the duration over which the root mean square pressure is averaged should be noted since it influences the result. Root mean square pressure, which is the square root of the arithmetic average of the squared instantaneous pressure values (Urick, 1983), is typically used in discussions of behavioral effects of sounds on vertebrates in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures. SPL_{pk} is applicable to impulsive, or pulsed, noise (such as airguns, explosions, gunshots, sonic booms, and impact pile driving); as such it is not applicable to SURTASS LFA sonar and therefore is not used for estimation of PTS (Level A harassment) in this rulemaking. All references to SPL in this document refer to the RMS unless otherwise noted. In addition, the Navy uses a Single Ping Equivalent (SPE) metric for the estimation of Level B harassment, as described below.

Cumulative Sound Exposure Level

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy contained within a pulse, and considers both exposure level and duration of exposure.

To assess potential for auditory injury of marine mammals from sound exposure, NMFS' 2018 Revision to Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Acoustic Technical Guidance) identifies specific injury thresholds for impulsive and non-impulsive sources, and divides marine mammals into hearing groups based on measured or estimated generalized hearing ranges. The Acoustic Technical Guidance uses a dual metric approach for impulsive sounds (*i.e.,* peak SPL (SPL_{pk}) and cumulative SEL (SEL_{cum})), but since SURTASS LFA sonar is a non-impulsive source, only the cumulative SEL_{cum} metric is used to account for the total energy received over the specified duration of sound exposure (*i.e.,* the metric accounts for both received level and duration of exposure) (Southall *et al.,* 2007; NMFS, 2018). NMFS' Acoustic Technical Guidance builds upon the foundation provided by Southall *et al.* (2007), while incorporating updated information that since became available on marine mammal hearing and impacts of noise on hearing (*e.g.,* DoN, 2017). NMFS (2018) recommends 24 hours as the default maximum accumulation period relative to SEL_{cum} thresholds.

Note that NMFS' SEL_{cum} acoustic thresholds also incorporate marine mammal auditory weighting functions, which take into account what is known about marine mammal hearing sensitivity and susceptibility to noise-induced hearing loss, and can be applied to a sound-level measurement to account for frequency-dependent hearing (NMFS, 2018). See Houser (2017) for a review of the development of auditory weighting functions for marine mammals. For further discussion of auditory weighting functions and their application or metrics associated with evaluating noise-induced hearing loss, see also NMFS (2018).

Table 17 displays auditory impact thresholds for onset of temporary and permanent threshold shifts (TTS and PTS, respectively) in hearing (from NMFS (2018)).

TABLE 17—TTS AND PTS ONSET THRESHOLDS FOR NON-IMPULSIVE SOUNDS [1]

Hearing group	Cumulative sound exposure level for TTS [1] (dB)	Cumulative sound exposure level for PTS [1] (dB)
Low-frequency cetaceans	179	199
Mid-frequency cetaceans	178	198
High-frequency cetaceans	153	173
Phoicid pinnipeds (PW) (Underwater)	181	201
Otariid pinnipeds (OW) (Underwater)	199	219

[1] Referenced to 1 μPa^2s; weighted according to appropriate auditory weighting function.

Single Ping Equivalent (SPE)

To model potential behavioral impacts to marine animals from exposure to SURTASS LFA sonar sound, the Navy has developed a methodology to estimate the total exposure of modeled animals exposed to multiple pings over an extended period of time. The Navy's acoustic model analyzes the following components: (1) The LFA sonar source modeled as a point source, with an effective source level (SL) of approximately 240 dB re: 1 μPa at 1 m (SPL); (2) a 60-sec duration signal; and (3) a beam pattern that is correct for the number and spacing of the individual projectors (source elements). This source model, when combined with the three-dimensional transmission loss (TL) field generated by the Parabolic Equation (PE) acoustic propagation model, defines the received level (RL) (in SPL) sound field surrounding the source for a 60-sec LFA sonar signal (*i.e.,* the SPE metric accounts for received level and exposure from multiple pings). To estimate the total exposure of animals exposed to multiple pings, the Navy models the RLs for each modeled location and any computer-simulated marine mammals (animats) within the location, records the exposure history of each animat, and generates a SPE value. Thus, the Navy can model the SURTASS LFA sound

field, providing a four-dimensional (position and time) representation of a sound pressure field within the marine environment and estimates of an animal's exposure to sound over a period of 24 hours.

Figure 2 shows the Navy calculation that converts SPL values to SPE values in order to estimate impacts to marine mammals from SURTASS LFA sonar transmissions. For a more detailed explanation of the SPE calculations, NMFS refers the public to Appendix B of the SURTASS 2018 DSEIS/SOEIS.

Figure 2. Equation for SPE as a Function of SPL.

$$SPE = 5 \times \mathrm{Log}_{10} \left(\sum \left(10^{(P_N/10)}\right)^2 \right)$$

SPE is the single ping equivalent of the N received transmissions at the animal.

N is the number of received transmissions at the animal, and

P_N is the received level or pressure in in dB re: 1 μPa (in SPL) at the modeled animal for each received transmission

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans).

Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with an exception for lower limits for low-frequency cetaceans where the result was deemed to be biologically implausible, and the lower bound from Southall *et al.* (2007) was retained while the lower frequency range for phocid pinnipeds was approximated. The generalized hearing 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 (LF) cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hz and 35 kHz;
- Mid-frequency (MF) cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency (HF) 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 for Otariidae.

Marine Mammal Hearing Groups and LFA Sonar

Baleen (mysticete) whales (members of the LF hearing group) have inner ears that appear to be specialized for low-frequency hearing. Conversely, most odontocetes (*i.e.,* dolphins and porpoises) have inner ears that are specialized to hear mid and high frequencies. Pinnipeds, which lack the highly specialized active biosonar systems of odontocetes, have inner ears that are specialized to hear a broad range of frequencies in water (Southall *et al.,* 2007 and NMFS, 2018). Based on measured hearing thresholds, the LFA sound source is below the range of known highest hearing sensitivity for MF and HF odontocetes and pinnipeds in water (Au, 1993; Au and Hastings, 2008; Gentry, 2009; Hall and Johnson, 1972; Houser *et al.,* 2008; Kastelein *et al.,* 2009, 2005, 2003, and 2002; Montie *et al.,* 2011; Mooney *et al.,* 2015; Mulsow and Reichmuth, 2010; Nedwell *et al.,* 2004; Richardson *et al.,* 1995; Ridgeway and Carder, 2001; Pacini *et al.,* 2011; Schlundt *et al.,* 2011; Sills *et al.,* 2014; Southall *et al.,* 2007; Szymanski *et al.,* 1999; Thomas *et al.,* 1990; Yuen *et al.,* 2005).

Marine Mammal Vocalization

Marine mammal vocalizations often extend both above and below the range of human hearing (higher than 20 kHz and lower than 20 Hz; Research Council, 2003). Measured data on the hearing abilities of cetaceans are sparse or non-existent, particularly for the larger cetaceans such as the baleen whales (mysticetes). The auditory thresholds of some of the smaller odontocetes have been determined in captivity. It is generally believed that cetaceans should at least be sensitive to the frequencies of their own vocalizations and those of conspecifics (*i.e.,* an organism of the same or similar species). Comparisons of the anatomy of cetacean inner ears and models of the structural properties and the response to vibrations of the ear's components in different species provide an indication of likely sensitivity to various sound frequencies. Thus, the ears of small toothed whales are optimized for receiving high-frequency sound, while baleen whale inner ears are best suited for low frequencies, including to infrasonic frequencies (Ketten, 1992; 1994; 1997; 1998).

Baleen whale (*i.e.,* mysticete) vocalizations are composed primarily of frequencies below one kHz, and some contain fundamental frequencies as low as 16 Hz (Watkins *et al.,* 1987; Richardson *et al.,* 1995; Rivers, 1997;

Moore *et al.,* 1998; Stafford *et al.,* 1999; Wartzok and Ketten, 1999) but can be as high as 24 kHz (humpback whale; Au *et al.,* 2006). Clark and Ellison (2004) suggested that baleen whales use low frequency sounds not only for long-range communication, but also as a simple form of echo ranging, using echoes to navigate and orient relative to physical features of the ocean. Information on auditory function in mysticetes is limited. Sensitivity to low frequency sound by baleen whales has been inferred from observed vocalization frequencies, observed reactions to playback of sounds, and anatomical analyses of the auditory system. Although there is apparently much variation, the source levels of most baleen whale vocalizations lie in the range of 150–190 dB re: 1 μPa at 1 m. Low-frequency vocalizations made by baleen whales and their corresponding auditory anatomy suggest that they have good low-frequency hearing (Ketten, 2000), although specific data on sensitivity, frequency or intensity discrimination, or localization abilities are lacking. Marine mammals, like all mammals, have typical U-shaped audiograms that begin with relatively low sensitivity (high threshold) at some specified low frequency with increased sensitivity (low threshold) to a species-specific optimum followed by a generally steep rise at higher frequencies (high threshold) (Fay, 1988).

Toothed whales (*i.e.,* odontocetes) produce a wide variety of sounds, which include species-specific broadband ''clicks'' with peak energy between 10 and 200 kHz, individually variable ''burst pulse'' click trains, and constant frequency or frequency-modulated (FM) whistles ranging from 4 to 16 kHz (Wartzok and Ketten, 1999). The general consensus is that the tonal vocalizations (whistles) produced by toothed whales play an important role in maintaining contact between dispersed individuals, while broadband clicks are used during echolocation (Wartzok and Ketten, 1999). Burst pulses have also been strongly implicated in communication, with some scientists suggesting that they play an important role in agonistic encounters (McCowan and Reiss, 1995), while others have proposed that they represent ''emotive'' signals in a broader sense, possibly representing graded communication signals (Herzing, 1996). Sperm whales, however, are known to produce only clicks, which are used for both communication and echolocation (Whitehead, 2003). Most of the energy of toothed whales' (*i.e.,* odontocetes) social vocalizations is concentrated near 10 kHz, with source levels for whistles as high as 100–180 dB re 1 μPa at 1 m (Richardson *et al.,* 1995). No odontocete has been shown audiometrically to have acute hearing (less than 80 dB re 1 μPa at 1 m) below 500 Hz (DoN, 2001; Ketten, 1998). Sperm whales produce clicks, which may be used to echolocate (Mullins *et al.,* 1988), with a frequency range from less than 100 Hz to 30 kHz and source levels up to 230 dB re 1 μPa at 1 m or greater (Mohl *et al.,* 2000).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activities (*e.g.,* use of acoustic sources) may impact marine mammals and their habitat. The ''Estimated Take'' 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 and the material it references, the ''Estimated Take'' 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.

The Navy has requested authorization for the incidental take of marine mammals that may result from upcoming use of SURTASS LFA sonar during training and testing activities on U.S. Naval ships in certain areas of the central and western North Pacific Ocean and eastern Indian Ocean. In addition to the use of LFA and HF/M3 sonar, the Navy has analyzed the potential impact of ship strike to marine mammals from SURTASS LFA sonar activities and, in consultation with NMFS as a cooperating agency for the SURTASS LFA sonar 2018 DSEIS/SOEIS, has determined that take of marine mammals incidental to this non-acoustic component of the Navy's training and testing activities is not reasonably likely to occur. This is due to the low speed at which the SURTASS LFA sonar vessels test and train (10 to 12 knots (kt)) and the suite of mitigation and monitoring efforts employed, including a three-pronged monitoring effort that involves visual and passive acoustic monitoring for marine mammals as well as use of the HF/M3 sonar (please see the Proposed Mitigation section below for more detail), which has been shown to be highly effective at detecting marine mammals. The Navy has not requested authorization for take of marine mammals that might occur incidental to vessel ship strike. In this document, NMFS analyzes the potential effects on marine mammals from exposure to LFA and HF/M3 sonar, but also includes some additional analysis of the potential impacts from vessel operations.

Overview of Potential Effects of Exposure to SURTASS LFA Sonar Activities

The potential effects of sound from the proposed SURTASS LFA sonar training and testing activities might include one or more of the following: Behavioral changes, masking, non-auditory injury (*i.e.,* gas bubble formation/rectified diffusion), and noise-induced loss of hearing sensitivity (more commonly called threshold shift). NMFS discusses these potential effects in more detail below.

The effects of underwater noise on marine mammals are highly variable, and one can categorize the effects as follows (Richardson *et al.,* 1995; Nowacek *et al.,* 2007; Southall *et al.,* 2007):

(1) The noise may be too weak to be heard at the location of the animal (*i.e.,* lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit behavioral reactions of variable conspicuousness and relevance to the well-being of the animal. These can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases, but potentially for longer periods of time. Depending on the nature and duration of these the disturbances, they could have effects on the well-being or reproduction of the animals involved;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), disturbance effects may persist, or disturbance effects could increase (sensitization, or becoming more sensitive to exposure). Persistent disturbance and sensitization are more likely with sounds that are highly variable in characteristics, infrequent, and unpredictable in occurrence, and associated with situations that the animal perceives as a threat. Marine mammals are not likely to be exposed enough to SURTASS LFA sonar to exhibit habituation or increased sensitization, due to the fact that SURTASS LFA sonar is a mobile source

operating in open water, and animals are likely to move away and/or would not be receiving pings in the way that small resident populations would receive with a stationary source;

(5) Any anthropogenic (human-made) noise that is strong enough to be heard has the potential to reduce the ability of a marine mammal to hear natural sounds at similar frequencies (masking), including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is a chronic exposure to noise, it is possible that there could be noise-induced physiological stress. This might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity, also known as threshold shift. In terrestrial mammals and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be the possibility of permanent hearing impairment. In addition, intense acoustic events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Direct Physiological Effects

Below we discuss the potential direct physiological effects of exposure to SURTASS LFA sonar, which include threshold shift (permanent and temporary) and acoustically mediated bubble growth.

Threshold Shift (Noise-Induced Loss of Hearing in Certain Frequencies)

When animals exhibit reduced hearing sensitivity within their auditory range (*i.e.,* sounds must be louder for an animal to detect them) following exposure to a sufficiently intense sound, or a less intense sound for a sufficient duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience a TTS and/or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is recovery back to baseline/pre-exposure levels), can occur within a specific frequency range (*i.e.,* an animal might only have a temporary loss of hearing sensitivity within a limited frequency band of its auditory range), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced by only six dB or reduced by 30 dB). PTS is permanent (*i.e.,* there is incomplete recovery back to baseline/pre-exposure levels), but also can occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity; modification of the chemical environment within the sensory cells; residual muscular activity in the middle ear; displacement of certain inner ear membranes; increased blood flow; and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. Generally, the amount of TS, and the time needed to recover from the effect, increase as amplitude and duration of sound exposure increases. Human non-impulsive noise exposure guidelines are based on the assumption that exposures of equal energy (the same SEL) produce equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.,* 2007). However, some more recent studies concluded that for all noise exposure situations the equal energy relationship may not be the best indicator to predict TTS onset levels (Mooney *et al.,* 2009a and 2009b; Kastak *et al.,* 2007). These studies highlight the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts. Generally, with sound exposures of equal energy, those that were quieter (lower sound pressure level (SPL)) with longer duration were found to induce TTS onset at lower levels than those of louder (higher SPL) and shorter duration. Less TS will occur from intermittent sounds than from a continuous exposure with the same energy (some recovery can occur between intermittent exposures) (Kryter *et al.,* 1966; Ward, 1997; Mooney *et al.,* 2009a, 2009b; Finneran *et al.,* 2010). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer (lower SPL) sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged or repeated exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold can cause PTS, at least in terrestrial mammals (Kryter, 1985; Lonsbury-Martin *et al.,* 1987). However, in the case of the proposed SURTASS LFA sonar activities, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS due to the nature of the activities. The potential for PTS becomes even more unlikely when mitigation measures are considered. PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. The NMFS 2018 Acoustic Technical Guidance, which was used in the assessment of effects for this action, compiled, interpreted, and synthesized the best available scientific information for noise-induced hearing effects for marine mammals to derive updated thresholds for assessing the impacts of noise on marine mammal hearing, as noted above. For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (summarized in DoN, 2017). TTS studies involving exposure to SURTASS LFA or other low-frequency sonar (below 1 kHz) have never been conducted due to logistical difficulties of conducting experiments with low frequency sound sources. However, there are TTS measurements for exposures to other LF sources, such as seismic airguns. Finneran *et al.* (2015) suggest that the potential for airguns to cause hearing loss in dolphins is lower than previously predicted, perhaps as a result of the low-frequency content of airgun impulses compared to the high-

frequency hearing ability of dolphins. For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals, and California sea lions (summarized in Finneran, 2015).

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious, similar to those discussed in auditory masking, below. Available data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds; Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). The Navy's SURTASS LFA source utilizes the 100–500 Hz frequency band, which suggests that if TTS were to be induced it would be in a frequency band somewhere between approximately 200 Hz and 1 kHz (but likely more in the middle of that range), which is in the range of most communication calls for mysticetes, some for pinnipeds, but below the range of most communication calls for odontocetes. While there are some broadband clicks in this range, most echolocation calls used by odontocetes for foraging are also below this frequency. Also, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that impeded communication. The fact that animals exposed to high levels of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is potentially more significant than simple existence of a TTS. However, it is important to note that TTS can result from longer exposures to sound at lower levels where a behavioral response may not be elicited.

Depending on the degree and frequency range, the effects of PTS on an animal could also range in severity, although PTS is considered generally more serious than TTS because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without some cost to the animal. There is no empirical evidence that exposure to SURTASS LFA sonar can cause PTS in any marine mammals, especially given the proximity to and duration that an animal would need to be exposed; instead the possibility of PTS has been inferred from studies of TTS on captive marine mammals.

As stated in the SURTASS DSEIS/SOEIS (section 4.5.2.1.3), modeling results show that all hearing groups except LF cetaceans would need to be within 22 feet (ft) (7 meters (m)) for an entire LFA transmission (60 seconds) to potentially experience PTS. A LF cetacean would need to be within 135 ft (41 m) for an entire LFA transmission to potentially experience PTS. Based on the mitigation procedures used during SURTASS LFA sonar activities, and the fact that animals reasonably can be expected to move away from disturbances, the chances of this occurring are negligible. This conclusion is supported by the fact that a marine mammal would have to match its swim speed with that of the SURTASS LFA sonar vessel while also remaining undetected by the HF/M3 mitigation system as it moved through the 2,000-yard LFA Mitigation Zone, and remain close to the source for a 60-second ping.

Acoustically Mediated Bubble Growth

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (*e.g.,* beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001b). A study of repetitive diving in trained bottlenose dolphins found no increase in blood nitrogen levels or formation of bubbles (Houser *et al.,* 2009). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of the SURTASS LFA sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested; stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become a problematic size. Research with *ex vivo* supersaturated bovine tissues suggests that, for a 37 kHz signal, a sound exposure of approximately 215 dB re 1μPa would be required before microbubbles became destabilized and grew (Crum *et al.,* 2005). Furthermore, tissues in the study were supersaturated by exposing them to pressures of 400–700 kiloPascals for periods of hours and then releasing them to ambient pressures. Assuming the equilibration of gases with the tissues occurred when the tissues were exposed to high pressures, levels of supersaturation in the tissues could have been as high as 400–700 percent. These levels of tissue supersaturation are substantially higher than model predictions for marine mammals (Houser *et al.,* 2001; Saunders *et al.,* 2008). Both the degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert.

Yet another hypothesis (decompression sickness) speculates that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Fernandez *et al.,* 2012). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Alternatively, Tyack *et al.* (2006) studied the deep diving behavior of beaked whales and concluded that: ''Using current models of breath-hold diving, we infer that their natural diving behavior is inconsistent with known problems of acute nitrogen

supersaturation and embolism.'' Collectively, these hypotheses (rectified diffusion and decompression sickness) can be referred to as ''hypotheses of acoustically-mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003; Cox *et al.,* 2006; Rommel *et al.,* 2006). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (*i.e.,* rectified diffusion). Work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at exposure levels and tissue saturation levels that are highly improbable to occur in diving marine mammals. Nowacek *et al.* (2007) and Southall *et al.* (2007) reviewed potential types of non-auditory injury to marine mammals from active sonar transmissions, including acoustically mediated bubble growth within tissues from supersaturated dissolved nitrogen gas. Detailed descriptions and information on these types of non-auditory impacts were provided in previous documentation for SURTASS LFA sonar (DoN, 2007, 2012, 2017), and no new data have emerged to contradict any of the assumptions or conclusions in previous LFA documentation, especially the conclusion that SURTASS LFA sonar transmissions are not expected to cause gas bubble formation or strandings. Although it has been argued that traumas from some beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003), there is no conclusive evidence of this (Rommel *et al.,* 2006). However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005, 2012) concluded that in vivo bubble formation, which may be exacerbated by deep, long-duration, repetitive dives, may explain why beaked whales appear to be particularly vulnerable to MF and HF active sonar exposures. This has not been demonstrated for LF sonar exposures, such as SURTASS LFA sonar.

In 2009, Hooker *et al.* tested two mathematical models to predict blood and tissue tension N2 (P_{N2}) using field data from three beaked whale species: Northern bottlenose whales, Cuvier's beaked whales, and Blainville's beaked whales. The researchers aimed to determine if physiology (body mass, diving lung volume, and dive response) or dive behavior (dive depth and duration, changes in ascent rate, and diel behavior) would lead to differences in P_{N2} levels and thereby decompression sickness risk between species.

In their study, they compared results for previously published time depth recorder data (Hooker and Baird, 1999; Baird *et al.,* 2006, 2008) from Cuvier's beaked whale, Blainville's beaked whale, and northern bottlenose whale. They reported that diving lung volume and extent of the dive response had a large effect on end-dive P_{N2}. Also, results showed that dive profiles had a larger influence on end-dive P_{N2} than body mass differences between species. Despite diel changes (*i.e.,* variation that occurs regularly every day or most days) in dive behavior, P_{N2} levels showed no consistent trend. Model output suggested that all three species live with tissue P_{N2} levels that would cause a significant proportion of decompression sickness cases in terrestrial mammals. The authors concluded that the dive behavior of Cuvier's beaked whale was different from both Blainville's beaked whale and northern bottlenose whale, resulting in higher predicted tissue and blood N2 levels (Hooker *et al.,* 2009) and suggesting that the prevalence of Cuvier's beaked whale strandings after naval sonar exercises could be explained by either a higher abundance of this species in the affected areas, or by possible species differences in behavior and/or physiology related to MF active sonar (Hooker *et al.,* 2009).

Bernaldo de Quiros *et al.* (2012) showed that, among evaluated stranded whales, deep diving species of whales had higher abundances of gas bubbles compared to shallow diving species. Kvadsheim *et al.* (2012) estimated blood and tissue P_{N2} levels in species representing shallow, intermediate, deep diving cetaceans following behavioral responses to sonar and their comparisons found that deep diving species had higher end-dive blood and tissue N_2 levels, indicating a higher risk of developing gas bubble emboli compared with shallow diving species. Fahlmann *et al.* (2014) evaluated dive data recorded from sperm, killer, long-finned pilot, Blainville's beaked and Cuvier's beaked whales before and during exposure to low (1–2 kHz) and mid (2–7 kHz) frequency active sonar in an attempt to determine if either differences in dive behavior or physiological responses to sonar are plausible risk factors for bubble formation. Note that SURTASS LFA sonar is transmitted between 100–500 Hz, which is well below the low frequency sonar in these studies. The authors suggested that CO_2 may initiate bubble formation and growth, while elevated levels of N_2 may be important for continued bubble growth. The authors also suggest that if CO_2 plays an important role in bubble formation, a cetacean escaping a sound source may experience increased metabolic rate, CO_2 production, and alteration in cardiac output, which could increase risk of gas bubble emboli. However, as discussed in Kvadsheim *et al.* (2012), the actual observed behavioral responses to sonar from the species in their study (sperm, killer, long-finned pilot, Blainville's beaked, and Cuvier's beaked whales) did not imply any significantly increased risk of decompression sickness due to high levels of N_2. Therefore, further information is needed to understand the relationship between exposure to stimuli, behavioral response (discussed in more detail below), elevated N_2 levels, and gas bubble emboli in marine mammals. The hypotheses for gas bubble formation related to beaked whale strandings is that beaked whales potentially have strong avoidance responses to MF active sonars because they sound similar to their main predator, the killer whale (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Baird *et al.,* 2008; Hooker *et al.,* 2009). Further investigation is needed to assess the potential validity of these hypotheses. However, because SURTASS LFA sonar transmissions are lower in frequency (less than 500 Hz) and dissimilar in characteristics from those of marine mammal predators, the SURTASS LFA sonar transmissions are not expected to cause gas bubble formation or beaked whale strandings.

To summarize, there are few data related to the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to situations where marine mammals were exposed to high powered sounds at close range over a prolonged period of time. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. However, as noted above, non-auditory physical effects are not likely to result from the use of SURTASS LFA sonar because of the required mitigation and unlikelihood of marine mammals being exposed to high powered sounds at close range.

Acoustic Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when other sounds in the environment are of a similar frequency and are louder than auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disrupt the behavior of individual animals, groups of animals, or, when over large spatial and temporal scales, entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, the detection of frequencies above those of the masking stimulus decreases. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995b) argued that the maximum radius of influence of an industrial noise (including broadband low-frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking has the potential to affect some species' ability to detect communication calls and natural sounds (*i.e.,* surf noise, prey noise, etc.) (Richardson *et al.,* 1995).

Erbe *et al.* (2016) reviewed the current state of understanding of masking in marine mammals, including anti-masking strategies for both receivers and senders. When a signal and noise are received from different directions, a receiver with directional hearing can reduce the masking impact. This is known as spatial release from masking, and this ability has been found in dolphins, killer whales and harbor seals. Given the hearing abilities of marine mammals, it is likely that most, if not all, species have this ability to some extent.

The echolocation calls of toothed whales are subject to masking by high-frequency sound. Human data indicate that low-frequency sounds can mask high-frequency sounds (*i.e.,* upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, and 1993) indicate that some species may use various processes to reduce masking effects (*e.g.,* adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the higher frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980). A study by Nachtigall and Supin (2008) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals. Holt *et al.* (2009) measured killer whale call source levels and background noise levels in the one to 40 kHz band and reported that the whales increased their call source levels by one dB SPL for every one dB SPL increase in background noise level. Similarly, another study on St. Lawrence River belugas reported a similar rate of increase in vocalization activity in response to passing vessels (Scheifele *et al.,* 2005).

Parks *et al.* (2007) provided evidence of behavioral changes in the acoustic behaviors of the endangered North Atlantic right whale, and the South Atlantic right whale, and suggested that these were correlated to increased underwater noise levels. The study indicated that right whales might shift the frequency band of their calls to compensate for increased in-band background noise. The significance of their result is the indication of potential species-wide behavioral change in response to gradual, chronic increases in underwater ambient noise. Di Iorio and Clark (2010) showed that blue whale calling rates vary in association with seismic sparker survey activity, with whales calling more on days with survey than on days without surveys. They suggested that the whales called more during seismic survey periods as a way to compensate for the elevated noise conditions.

Risch *et al.* (2012) documented reductions in humpback whale vocalizations in the Stellwagen Bank National Marine Sanctuary concurrent with transmissions of the Ocean Acoustic Waveguide Remote Sensing (OAWRS) low-frequency fish sensor system at distances of 200 km (124 mi) from the source. The recorded OAWRS produced a series of frequency-modulated pulses and the signal received levels ranged from 88 to 110 dB re: 1 μPa (Risch *et al.,* 2012). The authors hypothesized that individuals did not leave the area but instead ceased singing and noted that the duration and frequency range of the OAWRS signals (a novel sound to the whales) were similar to those of natural humpback whale song components used during mating (Risch *et al.,* 2012). Thus, the novelty of the sound to humpback whales in the study area provided a compelling contextual probability for the observed effects (Risch *et al.,* 2012). However, the authors did not state or imply that these changes had long-term effects on individual animals or populations (Risch *et al.,* 2012). Gong *et al.,* (2014) assessed the effects of the OAWRS transmissions on calling rates on Georges Bank and determined constant vocalization rates of humpback whales, with a reduction occurring before the OAWRS system began transmitting. Risch *et al.* (2014) pointed out that the results of Risch *et al.* (2012) and Gong *et al.* (2014) are not contradictory, but rather highlight the principal point of their original paper that behavioral responses depend on many factors, including range to source, RL above background noise level, novelty of signal, and differences in behavioral state.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as some masking studies might suggest (Richardson *et al.,* 1995). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio.

As mentioned previously, the hearing ranges of mysticetes overlap with the frequencies of the SURTASS LFA sonar sources. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. The Navy provided an analysis of marine mammal hearing and masking in Subchapter 4.5.2.1.3 of the DSEIS/

SOEIS, and the masking effects of the SURTASS LFA sonar signal are expected to be limited for a number of reasons. First, the frequency range (bandwidth) of the system is limited to approximately 30 Hz, and the instantaneous bandwidth at any given time of the signal is small, on the order of 10 Hz. Second, the average duty cycle is always less than 20 percent and, based on past SURTASS LFA sonar operational parameters (2003 to 2018), is normally 7.5 to 10 percent. Third, given the average maximum pulse length (60 sec), and the fact that the signals vary and do not remain at a single frequency for more than 10 sec, SURTASS LFA sonar is not likely to cause significant masking. In other words, the LFA sonar transmissions are coherent, narrow bandwidth signals of six to 100 sec in length followed by a quiet period of six to 15 minutes. Therefore, the effect of masking will be limited because animals that use this frequency range typically use broader bandwidth signals. As a result, the chances of an LFA sonar sound actually overlapping whale calls at levels that would interfere with their detection and recognition will be extremely low.

Impaired Communication

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalizations can be detected before they drop to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations apart from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004, Marten and Marler, 1977; Patricelli *et al.,* 2006). Most species that vocalize are able to adapt by adjusting their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals can make adjustments to vocalization characteristics such as the frequency structure, amplitude, temporal structure and temporal delivery.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations, impairing communications between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments are not directly known in all instances, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996). For example in birds, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006).

Stress Responses

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sometimes sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

According to Moberg (2000), in the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier and Rivest, 1991), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance (Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress, which is adaptive and does not normally place an animal at risk, and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions. For example, when a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called distress (Seyle, 1950) or allostatic loading (McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involve a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress

responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Thompson and Hamer, 2000).

There is limited information on the physiological responses of marine mammals to anthropogenic sound exposure, as most observations have been limited to short-term behavioral responses, which included cessation of feeding, resting, or social interactions. Information has been collected on the physiological responses of marine mammals to anthropogenic sounds (Fair and Becker, 2000; Romano *et al.,* 2002; Wright *et al.,* 2008), and various efforts have been undertaken to investigate the impact from vessels including whale watching vessels as well as general vessel traffic noise (Bain, 2002; Erbe, 2002; Noren *et al.,* 2009; Williams *et al.,* 2006, 2009, 2014a, 2014b; Read *et al.,* 2014; Rolland *et al.,* 2012; Pirotta *et al.,* 2015). This body of research for the most part has investigated impacts associated with the presence of chronic stressors (*e.g.,* whale watch vessels), which differ significantly from the proposed Navy SURTASS LFA sonar activities. For example, in the analysis of energy costs to killer whales, Williams *et al.* (2009) suggested that whale-watching in Canada's Johnstone Strait resulted in lost feeding opportunities due to vessel disturbance, which could carry higher costs than other measures of behavioral change might suggest. Ayres *et al.* (2012) reported on research in the Salish Sea (state of Washington) involving the measurement of southern resident killer whale fecal hormones to assess two potential threats to the species recovery: Lack of prey (salmon) and impacts to behavior from vessel traffic. The authors suggested that the lack of prey overshadowed any population-level physiological impacts on southern resident killer whales from vessel traffic. 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. In a conceptual model developed by the Population Consequences of Acoustic Disturbance (PCAD) working group, serum hormones were identified as possible indicators of behavioral effects that are translated into altered rates of reproduction and mortality (NRC, 2005). The Office of Naval Research hosted a workshop (Effects of Stress on Marine Mammals Exposed to Sound) in 2009 that focused on this very topic (ONR, 2009). Ultimately, the PCAD working group issued a report (Cochrem, 2014) that summarized information compiled from 239 papers or book chapters relating to stress in marine mammals and concluded that stress responses can last from minutes to hours and, while we typically focus on adverse stress responses, stress response is part of a natural process to help animals adjust to changes in their environment and can also be either neutral or beneficial. Of note, work published by the National Academies of Sciences, Engineering and Medicine built upon previous reports to assess current methodologies used for evaluating cumulative effects and identified new approaches that could improve these assessments focusing on ways to quantify exposure-related changes in behavior, health, or body condition of individual marine mammals (National Academies, 2017).

Despite the lack of robust information on stress responses for marine mammals exposed to anthropogenic sounds, studies of other marine and terrestrial animals lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as distress upon exposure to low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (*e.g.,* elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) and stress in marine mammals remains limited, it is reasonable to assume that reducing an animal's ability to gather information about its environment and communicate with conspecifics could induce stress in animals that use hearing as their primary sensory mechanism. We also assume that acoustic exposures sufficient to trigger onset of a threshold shift (PTS or TTS) would be accompanied by physiological stress responses, because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, due to the effect of noise and the need to effectively gather acoustic information and respond, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset of TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses associated with TTS. Much more research is needed to begin to understand the potential for physiological stress in marine mammals. As discussed in the Behavioral Response/Disturbance section below, the existing data suggest a variable response that depends on the characteristics of the received signal and prior experience with the received signal. However, NMFS anticipates that the nature of SURTASS LFA sonar training and testing activities, where a small number of vessels operate LFA sonar for relatively short durations in open ocean environments, in combination with many of the same factors discussed above related to masking, will limit the potential for stress responses due to SURTASS LFA sonar training and testing activities. These factors include the fact that continuous-frequency waveforms have durations of no longer than 10 seconds; frequency-modulated waveforms have limited bandwidths (30 Hz); and when LFA sonar is transmitting, the source is active only 7.5 to 10 percent of the time, with a maximum 20 percent duty cycle, which means that for 90 to 92.5 percent of the time, there is no potential for masking.

Behavioral Response/Disturbance

Southall *et al.* (2007) reviewed the available literature on marine mammal hearing and physiological and behavioral responses to human-made sound with the goal of proposing exposure criteria for certain effects. This peer-reviewed compilation of literature is very valuable, though Southall *et al.* (2007) note that not all data are equal:

Some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables. Such data were reviewed and sometimes used for qualitative illustration, but no quantitative criteria were recommended for behavioral responses. All of the studies considered, however, contain an estimate of the received sound level when the animal exhibited the indicated response.

In the Southall *et al.* (2007) publication, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. LFA sonar is considered a non-pulse sound. Southall *et al.* (2007) summarizes the studies associated with low-frequency, mid-frequency, and high-frequency cetacean and pinniped responses to non-pulse sounds, based strictly on received level, in Appendix C of their article (incorporated by reference and summarized in the following paragraphs).

The studies that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources, including: Vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1 μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB re: 1 μPa range. As mentioned earlier, though, contextual variables play a very important role in the reported responses, and the severity of effects are not necessarily linear when compared to a received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts, or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources including: Pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), MF active sonar, and non-pulse bands and tones. Southall *et al.* (2007) were unable to come to a clear conclusion regarding the results of these studies. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB re: 1 μPa, while in other cases these responses were not seen in the 120 to 150 dB re: 1 μPa range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources including: Pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (approximately 90–120 dB re: 1 μPa), at least for initial exposures. All recorded exposures above 140 dB re: 1 μPa induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies. There are no data to indicate whether other high-frequency cetaceans are as sensitive to anthropogenic sound as harbor porpoises.

The studies that address the responses of pinnipeds in water to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources including: AHDs, ATOC, various non-pulse sounds used in underwater data communication, underwater drilling, and construction noise. Few studies exist with enough information to include them in this analysis. The limited data suggest that exposure to non-pulse sounds between 90 and 140 dB re: 1 μPa generally do not result in strong behavioral responses of pinnipeds in water, but no data exist at higher received levels.

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of, as well as the nature and magnitude of response to, an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future. Animals can also be innately predisposed to respond to certain sounds in certain ways (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of the sound to biologically relevant sounds in the animal's environment (*i.e.,* calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007; DeRuiter *et al.,* 2013). Individuals of different age, gender, reproductive status, etc. among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.,* proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone. For example, Goldbogen *et al.* (2013) demonstrated that individual behavioral state was critically important in determining response of blue whales to sonar, noting that individuals engaged in deep (≤50 m) feeding behavior had greater dive responses than those in shallow feeding or non-feeding conditions. Some blue whales in the Goldbogen *et al.* (2013) study that were engaged in shallow feeding behavior demonstrated no clear changes in diving or movement even when RLs were high (~160 dB re 1μPa) for exposures to 3–4 kHz sonar signals, while others showed a clear response at exposures at lower RLs of sonar and pseudorandom noise.

Studies by DeRuiter *et al.* (2012) indicate that variability of responses to acoustic stimuli depends not only on the species receiving the sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Another study by DeRuiter *et al.* (2013) examined behavioral responses of Cuvier's beaked whales to MF sonar and found that whales responded strongly at low received levels (RL of 89–127 dB re 1μPa) by ceasing normal fluking and echolocation, swimming rapidly away, and extending both dive duration and subsequent non-foraging intervals when the sound source was 3.4–9.5 km away. Importantly, this study also showed that whales exposed to a similar range of RLs (78–106 dB re 1μPa) from distant sonar exercises (118 km away) did not elicit such responses, suggesting that context (here, in the form of distance) may moderate reactions. In a review of research conducted, including 370 published papers, Gomez *et al.* (2016)

demonstrated that more severe behavioral responses were not consistently associated with higher RL, but that the type of source transmitting the acoustic energy was a key factor, highlighting the importance of context of exposure in impact analysis.

Ellison *et al.* (2012) outlined an approach to assessing the effects of sound on marine mammals that incorporates contextual-based factors. The authors recommend considering not just the received level of sound, but also the activity the animal is engaged in at the time the sound is received, the nature and novelty of the sound (*i.e.,* is this a new sound from the animal's perspective), and the distance between the sound source and the animal. They submit that this ''exposure context,'' as it is termed, greatly influences the type of behavioral response exhibited by the animal. This sort of contextual information is challenging to predict with accuracy for ongoing activities that occur over large spatial and temporal expanses. While contextual elements of this sort are typically not included in calculations to quantify take estimates of marine mammals, they are often considered qualitatively in the analysis of the likely consequences of sound exposure, where supporting information is available.

Friedlaender *et al.* (2016) provided the first integration of direct measures of prey distribution and density variables incorporated into across-individual analyses of behavior responses of blue whales to sonar, and demonstrated a 5-fold increase in the ability to quantify variability in blue whale diving behavior. These results illustrate that responses evaluated without such measurements for foraging animals may be misleading, which again illustrates the context-dependent nature of the probability of response.

Exposure of marine mammals to sound sources can result in, but is not limited to, no response or any of the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; avoidance; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). More recent reviews (Nowacek *et al.,* 2007; DeRuiter *et al.,* 2012 and 2013; Ellison *et al.,* 2012) addressed studies conducted since 1995 and focused on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. In a review of experimental field studies to measure behavioral responses of cetaceans to sonar, Southall *et al.* (2016) states that results demonstrate that some individuals of different species display clear yet varied responses, some of which have negative implications, while others appear to tolerate high levels, and that responses may not be fully predictable with simple acoustic exposure metrics (*e.g.,* received sound level). Rather, the authors state that differences among species and individuals along with contextual aspects of exposure (*e.g.,* behavioral state) appear to affect response probability. The following subsections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the different sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Predictions about the types of behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species or extrapolated from closely related species when no information exists, along with contextual factors.

Alteration of Diving or Movement

Changes in dive behavior can vary widely. They 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. Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (*e.g.,* increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving 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.

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, which they noted could lead to an increased likelihood of ship strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach, and the speed of approach, all seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low-frequency signals of the ATOC sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.,* 2003). However, they did produce subtle effects that varied in direction and degree among the individual seals, illustrating the varied nature of behavioral effects and consequent difficulty in defining and predicting them. Lastly, as noted previously, DeRuiter *et al.* (2013) noted that distance from a sound source may moderate marine mammal reactions in their study of Cuvier's beaked whales showing the whales swimming rapidly and silently away when a sonar signal was 3.4–9.5 km away, while showing no such reaction to the same signal when the signal was 118 km away even though the RLs were similar.

Foraging

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. Noise from seismic surveys was not found to impact the feeding behavior of western gray whales off the coast of Russia (Yazvenko *et al.,* 2007) and sperm whales engaged in foraging dives did not abandon dives when exposed to distant signatures of seismic airguns (Madsen *et al.,* 2006). Balaenopterid whales exposed to moderate SURTASS LFA sonar demonstrated no responses or change in foraging behavior that could be attributed to the low-frequency sounds (Croll *et al.,* 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.,* 2004). Although the received sound pressure level was similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are

likely contributing factors to the differential response.

Blue whales exposed to simulated mid-frequency sonar in the Southern California Bight were less likely to produce low frequency calls usually associated with feeding behavior (Melcón *et al.,* 2012). However, the authors were unable to determine if suppression of low frequency calls reflected a change in their feeding performance, or abandonment of foraging behavior and indicated that implications of the documented responses are unknown. Further, it is not known whether the lower rates of calling actually indicated a reduction in feeding behavior or social contact since the study used data from remotely deployed, passive acoustic monitoring buoys. In contrast, blue whales increased their likelihood of calling when ship noise was present, and decreased their likelihood of calling in the presence of explosive noise, although this result was not statistically significant (Melcón *et al.,* 2012). Additionally, the likelihood of an animal calling decreased with the increased received level of mid-frequency sonar, beginning at a SPL of approximately 110–120 dB re 1 μPa (Melcón *et al.,* 2012). Results from the 2010–2011 field season of an ongoing behavioral response study in Southern California waters indicated that, in some cases and at low received levels, tagged blue whales responded to mid-frequency sonar but that those responses were mild and there was a quick return to their baseline activity (Southall *et al.,* 2011; Southall *et al.,* 2012). Goldbogen *et al.* (2013) monitored behavioral responses of tagged blue whales located in feeding areas when exposed to simulated MFA sonar. Responses varied depending on behavioral context, with deep feeding whales being more significantly affected (*i.e.,* generalized avoidance; cessation of feeding; increased swimming speeds; or directed travel away from the source) compared to surface feeding individuals that typically showed no change in behavior. Non-feeding whales also seemed to be affected by exposure. The authors indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual whale could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication this is the case for the proposed SURTASS LFA sonar activities, particularly since SURTASS LFA sonar training and testing activities take place offshore in open ocean environments and are fairly spread out and relatively short-term in nature, unconsumed prey would likely still be available in the environment in most cases following the cessation of acoustic exposure. A determination of whether foraging disruptions incur fitness consequences is informed by estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal, but is also based on an understanding of the magnitude and duration of the disruption.

Social Relationships

Social interactions between mammals can be affected by noise via the disruption of communication signals or by the displacement of individuals. Sperm whales responded to military sonar, apparently from a submarine, by dispersing from social aggregations, moving away from the sound source, remaining relatively silent, and becoming difficult to approach (Watkins *et al.,* 1985). In contrast, sperm whales in the Mediterranean that were exposed to submarine sonar continued calling (J. Gordon pers. comm. cited in Richardson *et al.,* 1995). However, social disruptions must be considered in context of the relationships that are affected. While some disruptions may not have deleterious effects, others, such as long-term or repeated disruptions of mother/calf pairs or interruption of mating behaviors, have the potential to affect the growth and survival or reproductive effort/success of individuals.

Vocalizations (Also See Masking Section)

Vocal changes in response to anthropogenic noise can occur across the repertoire of sound production modes used by marine mammals, such as whistling, echolocation click production, calling, and singing. Changes may result in response to a need to compete with an increase in background noise or may reflect an increased vigilance or startle response. For example, in the presence of low-frequency active sonar, humpback whales have been observed to increase the length of their ''songs'' (Miller *et al.,* 2000; Fristrup *et al.,* 2003), possibly due to the overlap in frequencies between the whale song and the low-frequency active sonar. A similar compensatory effect for the presence of low-frequency vessel noise has been suggested for right whales; 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). Killer whales off the northwestern coast of the United States have been observed to increase the duration of primary calls once a threshold in observing vessel density (*e.g.,* whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.,* 2004). In contrast, both sperm and pilot whales potentially ceased sound production during the Heard Island feasibility test (Bowles *et al.,* 1994), although it cannot be absolutely determined whether the inability to acoustically detect the animals was due to the cessation of sound production or the displacement of animals from the area.

Aicken *et al.* (2005) monitored the behavioral responses of marine mammals to a new low-frequency active sonar system used by the British Navy (the United States Navy considers this to be a mid-frequency source as it operates at frequencies greater than 1,000 Hz). During those trials, fin whales, sperm whales, Sowerby's beaked whales, long-finned pilot whales, Atlantic white-sided dolphins, and common bottlenose dolphins were observed and their vocalizations were recorded. These monitoring studies detected no evidence of behavioral responses that the investigators could attribute to exposure to the low-frequency active sonar during these trials.

Avoidance

Avoidance is the displacement of an individual from an area as a result of the presence of a sound. Richardson *et al.* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals. Avoidance is qualitatively different from the flight response, and also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, etc.). Oftentimes, avoidance is temporary and animals return to the area once the noise has ceased. However, longer-term displacement is possible and can lead to changes in abundance or distribution patterns of the species in the affected region if animals do not become acclimated to the presence of the chronic sound (Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006). Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.,* 2001; Finneran *et al.,* 2003; Kastelein *et al.,* 2006a; Kastelein *et al.,* 2006b).

Short-term avoidance of seismic surveys, low-frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.,* 1994; Goold, 1996, 1998; Stone *et al.,* 2000; Morton and Symonds, 2002) and to some extent in mysticetes (Gailey *et al.,* 2007), while long-term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to result from the presence of chronic vessel noise (Haviland-Howell *et al.,* 2007; Miksis-Olds *et al.,* 2007).

In 1998, the Navy conducted a Low Frequency Sonar Scientific Research Program (LFS SRP) specifically to study behavioral responses of several species of marine mammals to exposure to LF sound, including one phase that focused on the behavior of gray whales to low frequency sound signals. The objective of this phase of the LFS SRP was to determine whether migrating gray whales respond more strongly to received levels (RL), sound gradient, or distance from the source, and to compare whale avoidance responses to an LF source in the center of the migration corridor versus in the offshore portion of the migration corridor. A single source was used to broadcast LFA sonar sounds at RLs of 170–178 dB re 1μPa. The Navy reported that the whales showed some avoidance responses when the source was moored one mile (1.8 km) offshore, and located within the migration path, but the whales returned to their migration path when they were a few kilometers beyond the source. When the source was moored two miles (3.7 km) offshore, outside the migration path, responses were much less even when the source level was increased to achieve the same RLs in the middle of the migration corridor as whales received when the source was located within the migration corridor (Clark *et al.,* 1999). In addition, the researchers noted that the offshore whales did not seem to avoid the louder offshore source.

Also during the LFS SRP, researchers sighted numerous odontocete and pinniped species in the vicinity of the sound exposure tests with LFA sonar. The MF and HF hearing specialists present in the study area showed no immediately obvious responses or changes in sighting rates as a function of source conditions. Consequently, the researchers concluded that none of these species had any obvious behavioral reaction to LFA sonar signals at received levels similar to those that produced only minor short-term behavioral responses in the baleen whales (*i.e.,* LF hearing specialists). Thus, for odontocetes, the chances of injury and/or significant behavioral responses to SURTASS LFA sonar would be low given the MF/HF specialists' observed lack of response to LFA sounds during the LFS SRP and due to the MF/HF frequencies which these animals are adapted to hear (Clark and Southall, 2009).

Maybaum (1993) conducted sound playback experiments to assess the effects of mid-frequency active sonar on humpback whales in Hawaiian waters. Specifically, she exposed focal pods to sounds of a 3.3-kHz sonar pulse, a sonar frequency sweep from 3.1 to 3.6 kHz, and a control (blank) tape while monitoring the behavior, movement, and underwater vocalizations. The two types of sonar signals differed in their effects on the humpback whales, but both resulted in avoidance behavior. The whales responded to the pulse by increasing their distance from the sound source and responded to the frequency sweep by increasing their swimming speeds and track linearity. In the Caribbean, sperm whales avoided exposure to mid-frequency submarine sonar pulses, in the range of 1000 Hz to 10,000 Hz (IWC, 2005).

Kvadsheim *et al.* (2007) conducted a controlled exposure experiment in which killer whales fitted with D-tags were exposed to mid-frequency active sonar (Source A: a 1.0 s upsweep 209 dB @1–2 kHz every 10 sec for 10 minutes; Source B: with a 1.0 s upsweep 197 dB @6–7 kHz every 10 sec for 10 min). When exposed to Source A, a tagged whale and the group it was traveling with did not appear to avoid the source. When exposed to Source B, the tagged whales, along with other whales that had been carousel feeding where killer whales cooperatively herd fish schools into a tight ball towards the surface and feed on the fish which have been stunned by tail slaps and subsurface feeding (Simila, 1997), ceased feeding during the approach of the sonar and moved rapidly away from the source. When exposed to Source B, Kvadsheim and his co-workers reported that a tagged killer whale seemed to try to avoid further exposure to the sound field by performing the following behaviors: Immediately swimming away (horizontally) from the source of the sound; engaging in a series of erratic and frequently deep dives that seemed to take it below the sound field; or swimming away while engaged in a series of erratic and frequently deep dives. Although the sample sizes in this study are too small to support statistical analysis, the behavioral responses of the orcas were consistent with the results of other studies.

In 2007, the first in a series of behavioral response studies (BRS) on deep diving odontocetes, funded by Navy, and supported by NMFS and other scientists, showed one beaked whale (*Mesoplodon densirostris*) responding to an MF active sonar playback. Tyack *et al.* (2011) indicates that the playback began when the tagged beaked whale was vocalizing at depth (at the deepest part of a typical feeding dive), following a previous control with no sound exposure. The whale appeared to stop clicking significantly earlier than usual, when exposed to mid-frequency signals in the 130–140 dB (rms) received level range. After a few more minutes of the playback, when the received level reached a maximum of 140–150 dB, the whale ascended on the slow side of normal ascent rates with a longer than normal ascent, at which point the exposure was terminated. The results are from a single experiment and a greater sample size is needed before robust and definitive conclusions can be drawn.

Tyack *et al.* (2011) also indicate that Blainville's beaked whales (a resident species within the Tongue of the Ocean, Bahamas study area) appear to be sensitive to noise at levels well below the onset of expected TTS (approximately 160 dB re: 1μPa at 1 m). This sensitivity was manifested by an adaptive movement away from a sound source. This response was observed irrespective of whether the signal transmitted was within the bandwidth of MF active sonar, which suggests that beaked whales may not respond to the specific sound signatures. Instead, they may be sensitive to any pulsed sound from a point source in the frequency range of the MF active sonar transmission. The response to such stimuli appears to involve the beaked whale increasing the distance between it and the sound source.

Southall *et al.* (2016) indicates that results from Tyack *et al.* (2011), Miller *et al.* (2015), Stimpert *et al.* (2014), and DeRuiter *et al.* (2013) all demonstrate clear, strong, and pronounced but varied behavioral changes including sustained avoidance with associated energetic swimming and cessation of feeding behavior at quite low received levels (~100 to 135 dB re 1μPa) for exposures to simulated or active MF military sonars (1 to 8 kHz) with sound sources approximately 2 to 5 km away, with a common theme being the context-dependent nature of the behavioral responses.

In the 2010 SOCAL BRS study, researchers again used controlled exposure experiments (CEE) to carefully measure behavioral responses of

individual animals to sound exposures of simulated tactical MF active sonar and pseudo-random noise. For each sound type, some exposures were conducted when animals were in a surface feeding (approximately 164 ft (50 m) or less) and/or socializing behavioral state and others while animals were in a deep feeding (greater than 164 ft (50 m)) and/or traveling mode. The researchers conducted the largest number of CEEs on blue whales (n=19) and of these, 11 CEEs involved exposure to the MF active sonar sound type. For the majority of CEE transmissions of either sound type, they noted few obvious behavioral responses detected either by the visual observers or on initial inspection of the tag data. The researchers observed that throughout the CEE transmissions, up to the highest received sound level (absolute RMS value approximately 160 dB re: 1μPa with signal-to-noise ratio values over 60 dB), two blue whales continued surface feeding behavior and remained at a range of around 3,820 ft (1,000 m) from the sound source (Southall *et al.,* 2011). In contrast, another blue whale (later in the day and greater than 11.5 mi (18.5 km; 10 nmi) from the first CEE location) exposed to the same stimulus (MFA) while engaged in a deep feeding/travel state exhibited a different response. In that case, the blue whale responded almost immediately following the start of sound transmissions when received sounds were just above ambient background levels (Southall *et al.,* 2011). The authors note that this kind of temporary avoidance behavior was not evident in any of the nine CEEs involving blue whales engaged in surface feeding or social behaviors, but was observed in three of the ten CEEs for blue whales in deep feeding/travel behavioral modes (one involving MFA sonar; two involving pseudo-random noise) (Southall *et al.,* 2011). Southall *et al.* (2016) provided an overview of the Southern California Behavioral Response Study (SOCAL–BRS). The results of this study, as well as the results of the DeRuiter *et al.* (2013) study of Cuvier's beaked whales discussed above, further illustrate the importance of behavioral context in understanding and predicting behavioral responses.

Flight Response

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. 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). Flight responses have been speculated as being a component of marine mammal strandings associated with MF active sonar activities (Evans and England, 2001). If marine mammals respond to Navy vessels that are transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses should increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997, 1998). In addition to the limited data on flight response for marine mammals, there are examples of this response in terrestrial species. For instance, the probability of flight responses in Dall's sheep (*Ovis dalli dalli*) (Frid, 2001), hauled-out ringed seals (*Phoca hispida*) (Born *et al.,* 1999), Pacific brant (*Branta bernicl nigricans*), and Canada geese (*B. Canadensis*) increased as a helicopter or fixed-wing aircraft more directly approached groups of these animals (Ward *et al.,* 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Breathing

Variations in respiration naturally occur with different behaviors. Variations in respiration rate as a function of acoustic exposure can 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. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to foraging grounds (Gailey *et al.,* 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.,* 2001; Kastelein *et al.,* 2006a) and emissions for underwater data transmission (Kastelein *et al.,* 2005). However, exposing the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.,* 2006a), again highlighting the importance of understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

Continued Pre-Disturbance Behavior and Habituation

Under some circumstances, some of the individual marine mammals that are exposed to active sonar transmissions will continue their normal behavioral activities. In other circumstances, individual animals will respond to sonar transmissions at lower received levels and move to avoid additional exposure or exposures at higher received levels (Richardson *et al.,* 1995).

It is difficult to distinguish between animals that continue their pre-disturbance behavior without stress responses, animals that continue their behavior but experience stress responses (that is, animals that cope with disturbance), and animals that habituate to disturbance (that is, they may have experienced low-level stress responses initially, but those responses abated over time). Watkins (1986) reviewed data on the behavioral reactions of fin, humpback, right and minke whales that were exposed to continuous, broadband low-frequency shipping and industrial noise in Cape Cod Bay. He concluded that underwater sound was the primary cause of behavioral reactions in these species of whales and that the whales responded behaviorally to acoustic stimuli within their respective hearing ranges. Watkins also noted that whales showed the strongest behavioral reactions to sounds in the 15 Hz to 28 kHz range, although negative reactions (avoidance, interruptions in vocalizations, etc.) were generally associated with sounds that were either unexpected, too loud, suddenly louder or different, or perceived as being associated with a potential threat (such as an approaching ship on a collision course). In particular, whales seemed to react negatively when they were within 100 m of the source or when received levels increased suddenly in excess of 12 dB relative to ambient sounds. At other times, the whales ignored the source of the signal and all four species habituated to these sounds. Nevertheless, Watkins concluded that whales ignored most sounds in the background of ambient noise, including sounds from distant human activities even though these sounds may have had considerable energies at frequencies well within the whales' range of hearing. Further, he noted that of the whales observed, fin whales were the most sensitive of the four species, followed by humpback whales; right whales were the least likely to be disturbed and generally did not react to low-amplitude engine noise. By the end of his period of study, Watkins (1986) concluded that fin and humpback

whales have generally habituated to the continuous and broadband noise of Cape Cod Bay while right whales did not appear to change their response. As mentioned above, animals that habituate to a particular disturbance may have experienced low-level stress responses initially, but those responses abated over time. In most cases, this likely means a lessened immediate potential effect from a disturbance. However, there is cause for concern where the habituation occurs in a potentially more harmful situation. For example, animals may become more vulnerable to vessel strikes once they habituate to vessel traffic (Swingle *et al.,* 1993; Wiley *et al.,* 1995).

Potential Effects of Behavioral Disturbance

The primary potential impact on marine mammals from exposure to SURTASS LFA sonar is behavioral response. We note here that not all behavioral responses rise to the level of take under the MMPA, and not all take results in significant changes in biologically important behaviors that are expected to impact individual fitness through effects on reproductive success or survival. Complexities associated with evaluation of when behavioral responses are likely to impact energetics or reproductive success, creating the potential for population consequences, are becoming clearer as data are compiled on extensively studied species and energetic models are created (Maresh *et al.,* 2014; New *et al.,* 2014; and Robinson *et al.,* 2012). There are few quantitative marine mammal data relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exist for terrestrial species to which we can draw comparisons for marine mammals. Several authors have reported that disturbance stimuli cause animals to abandon nesting and foraging sites (Sutherland and Crockford, 1993); cause animals to increase their activity levels and suffer premature deaths or reduced reproductive success when their energy expenditures exceed their energy budgets (Daan *et al.,* 1996; Feare, 1976; Mullner *et al.,* 2004); or cause animals to experience higher predation rates when they adopt risk-prone foraging or migratory strategies (Frid and Dill, 2002). Each of these studies addressed the consequences of animals shifting from one behavioral state (*e.g.,* resting or foraging) to another behavioral state (*e.g.,* avoidance or escape behavior) because of human disturbance or disturbance stimuli.

One consequence of behavioral avoidance results in the altered energetic expenditure of marine mammals because energy is required to move and avoid surface vessels or the sound field associated with active sonar (Frid and Dill, 2002). Most animals can avoid that energetic cost by swimming away at slow speeds or speeds that minimize the cost of transport (Miksis-Olds, 2006), as has been demonstrated in Florida manatees (Miksis-Olds, 2006).

Those energetic costs increase, however, when animals shift from a resting state, which is designed to conserve an animal's energy, to an active state that consumes energy the animal would have conserved had it not been disturbed. Marine mammals that have been disturbed by anthropogenic noise and vessel approaches are commonly reported to shift from resting to active behavioral states, which would imply that they incur an energy cost.

Morete *et al.* (2007) reported that undisturbed humpback whale cows that were accompanied by their calves were frequently observed resting while their calves circled them (milling). When vessels approached, the amount of time cows and calves spent resting and milling, respectively, declined significantly. These results are similar to those reported by Scheidat *et al.* (2004) for the humpback whales they observed off the coast of Ecuador.

Constantine and Brunton (2001) reported that bottlenose dolphins in the Bay of Islands, New Zealand, engaged in resting behavior just five percent of the time when vessels were within 300 m, compared with resting 83 percent of the time when vessels were not present. However, Heenehan *et al.* (2016) report that results of a study of the response of Hawaiian spinner dolphins to human disturbance suggest that the key factor is not the sheer presence or magnitude of human activities, but whether the activities are directed and focused on dolphins at rest. This information again illustrates the importance of context in regard to whether an animal will respond to a stimulus. Miksis-Olds (2006) and Miksis-Olds *et al.* (2005) reported that Florida manatees in Sarasota Bay, Florida, reduced the amount of time they spent milling and increased the amount of time they spent feeding when background noise levels increased. Although the acute costs of these changes in behavior are not likely to exceed an animal's ability to compensate, the chronic costs of these behavioral shifts are uncertain.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or unconsciously (*e.g.,* when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treating the stimulus as a disturbance and responding accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or attend to cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, vigilance comes at a cost; when animals focus their attention on specific environmental cues, they are not attending to other activities, such as foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (*e.g.,* multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (*e.g.,* when they are giving birth or accompanied by a calf). Most of the published literature suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. An example of this concept with terrestrial species involved bighorn sheep and Dall's sheep, which dedicated more time to being vigilant, and spent less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001). Vigilance has also been documented in pinnipeds at haul out sites where resting may be disturbed when seals become alerted and/or flush into the water due to a variety of disturbances, which may be anthropogenic (noise and/or visual stimuli) or due to other natural causes such as other pinnipeds (Richardson *et al.,* 1995; Southall *et al.,* 2007;

VanBlaricom, 2010; and Lozano and Hente, 2014).

Several authors have established that long-term and intense disturbance stimuli can cause population effects by reducing the physical condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.,* 1996; Madsen, 1994; White, 1985). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46 percent reproductive success rate compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17 percent reproductive success rate. Similar reductions in reproductive success have been reported for other non-marine mammal species; for example, mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou (*Rangifer tarandus caribou*) disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), and caribou disturbed by low-elevation military jet flights (Luick *et al.,* 1996; Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand while decreasing their caloric intake/energy). As an example of this concept with terrestrial species involved, a study of grizzly bears (*Ursus horribilis*) during July and August 1992 reported that bears disturbed by hikers reduced their energy intake by an average of 12 kilocalories/min (50.2×10^3 kiloJoules/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.,* 1999). Alternately, Ridgway *et al.* (2006) reported that increased vigilance in captive bottlenose dolphins exposed to sound over a five-day period in open-air, open-water enclosures in San Diego Bay did not cause any sleep deprivation or stress effects such as changes in cortisol or epinephrine levels.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant for fitness 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 significant unless it could directly affect reproduction or survival (Southall *et al.,* 2007). It is important to note the difference between behavioral reactions lasting or recurring over multiple days and anthropogenic activities lasting or recurring over multiple days. For example, at-sea SURTASS LFA sonar training and testing activities last for multiple days, but this does not necessarily mean individual animals will be exposed to those exercises for multiple days or exposed in a manner that would result in a sustained behavioral response due to nature of these activities (few vessels spread out in open ocean environments operating fairly sporadically for relatively short term timeframes).

In order to understand how the effects of activities may or may not impact species and stocks of marine mammals, it is necessary to understand not only what the likely disturbances are going to be, but how those disturbances are likely to affect the reproductive success and survivorship of individuals, and then how those impacts to individuals translate to population-level effects. Following on the earlier work of a committee of the U.S. National Research Council (NRC, 2005), an effort by New *et al.* (2014) termed ''Potential Consequences of Disturbance (PCoD)'' outlined an updated conceptual model of the relationships linking disturbance to changes in behavior and physiology, health, vital rates, and population dynamics. In this framework, behavioral and physiological changes can have direct (acute) effects on vital rates, such as when changes in habitat use or increased stress levels raise the probability of mother-calf separation or predation; they can have indirect and long-term (chronic) effects on vital rates, such as when changes in time/energy budgets or increased disease susceptibility affect health, which then later affect vital rates; or they can have no effect to vital rates. In addition to outlining this general framework and compiling the relevant literature that supports it, the authors chose four example species for which extensive long-term monitoring data exist (southern elephant seals, North Atlantic right whales, Ziphidae beaked whales, bottlenose dolphins, harbor porpoise, and others) and developed state-space energetic models that can be used to effectively forecast longer-term, population-level impacts to these species from behavioral changes. An updated study (National Academies, 2017) addressed approaches to understanding the cumulative effects of stressors (*i.e.,* stressors from multiple activities) on marine mammals.

Pirotta *et al.* (2018) reviewed the application of the PCoD framework to marine mammal populations, providing an updated synopsis of studies that have been completed and approaches that have been used to model effects in the framework. Farmer *et al.* (2018) applied the PCoD framework to develop a probabilistic framework for quantitatively assessing the cumulative impacts of oil and sound exposure to sperm whales in the Northern Gulf of Mexico. The authors concluded that uncertainty in their results emphasized a need for further controlled exposure experiments to generate behavioral disturbance dose-response curves and detailed evaluation of individual resilience following disturbance events. While these are very specific models with specific data requirements that cannot yet be applied to project-specific risk assessments or for the majority of species, they are a critical first step towards being able to quantify the likelihood of a population level effect. However, as noted above, due to the nature of the SURTASS LFA sonar training and testing activities, the potential for masking, behavioral effects, and stress would be limited, so the potential for population level effects would also be limited (See relevant sections, above). This potential is further reduced due to implementation of the monitoring and mitigation measures discussed below (See Proposed Mitigation and Proposed Monitoring sections below).

Stranding and Mortality

The 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 (16 U.S.C. 1421h).

Marine mammals are known to 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 predispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; Fair and Becker, 2000; Moberg, 2000; Relyea, 2005a, 2005b, Romero, 2004; Sih *et al.,* 2004).

In 1992, Congress amended the MMPA to establish the Marine Mammal Health and Stranding Response Program (MMHSRP) under authority of NMFS. The MMHSRP was created out of concern over marine mammal mortalities, to formalize the stranding response process, to focus efforts being initiated by numerous local stranding organizations, and as a result of public concern.

Strandings Associated With Active Sonar

Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) concluded that, out of eight mass stranding events reported from the mid-1980s to the summer of 2003, most had been coincident with the use of tactical MF active sonar and most involved beaked whales. However, these reports rarely talk about the number of strandings that are not associated with sonar exercises, which number in the thousands. According to Bernaldo de Quiros *et al.* (2019) a review of current knowledge on beaked whale atypical mass strandings associated with MF active sonar suggests that effects vary among individuals or populations, and predisposing factors may contribute to individual outcomes. Differences between tactical MF sonar and SURTASS LFA sonar, as well as the potential for strandings due to SURTASS LFA sonar, are addressed further below.

Over the past 23 years, there have been five mass stranding events coincident with military MF active sonar use in which exposure to sonar is believed to have been a contributing factor: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). NMFS refers the reader to DoN (2013) for a report on these strandings associated with Navy sonar activities; Cox *et al.* (2006) for a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), and Canary Islands (2002); and Fernandez *et al.* (2005) for an additional summary of the Canary Islands 2002 stranding event. Additionally, in 2004, during the Rim of the Pacific (RIMPAC) exercises, between 150 and 200 usually pelagic melon-headed whales occupied the shallow waters of Hanalei Bay, Kauai, Hawaii for over 28 hours. NMFS determined that mid-frequency active sonar (MFAS) was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the Hanalei Bay stranding. A number of other stranding events coincident with the operation of MFAS, including the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales), have been reported. However, the majority have not been investigated to the degree necessary to determine the cause of the stranding and only one of these stranding events, the Bahamas (2000), was associated with exercises conducted by the U.S. Navy. Most recently, the Independent Scientific Review Panel investigating potential contributing factors to a 2008 mass stranding of melon-headed whales in Antsohihy, Madagascar, released its final report suggesting that the stranding was likely initially triggered by an industry seismic survey. This report suggests that the operation of a commercial high-powered 12 kHz multi-beam echosounder during an industry seismic survey was a plausible and likely initial trigger that caused a large group of melon-headed whales to leave their typical habitat and then ultimately strand as a result of secondary factors such as malnourishment and dehydration. The report indicates that the risk of this particular convergence of factors and ultimate outcome is likely very low, but recommends that the potential be considered in environmental planning.

In the event that Navy personnel (uniformed military, civilian, or contractors conducting Navy work) associated with operating a SURTASS LFA sonar-equipped vessel discover a live or dead stranded marine mammal at sea, the Navy shall report the incident to NMFS in accordance with the *Stranding and Notification Plan,* available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0.* In addition, in the event of a ship strike of a marine mammal by any SURTASS LFA sonar-equipped vessel, the Navy will also report the incident to NMFS in accordance with the *Stranding and Notification Plan* (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0*). If NMFS personnel determine that the circumstances of any marine mammal stranding suggests investigation of the association of Navy SURTASS LFA sonar training and testing activities is warranted, and an investigation is being pursued, NMFS would submit a written request to Navy asking that they provide the requested initial information as soon as possible, but not later than seven business days after the request is received, per the *Stranding and Notification Plan.* Finally, in the event of a live stranding (or near-shore atypical milling), NMFS would advise the Navy of the need to implement shutdown procedures for any use of SURTASS LFA sonar within 50 km (27 nmi) of the live stranding.

Shutdown procedures are not related to the investigation of the cause of the stranding and their implementation is not intended to imply that Navy activity is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that contributed to the stranding.

Potential for Stranding From LFA Sonar

There is no empirical evidence of strandings of marine mammals associated with the employment of SURTASS LFA sonar since its use began in the early 2000s. Moreover, both the system acoustic characteristics and the operational parameters of SURTASS LFA sonar differ from MFA sonars. SURTASS LFA sonars use frequencies generally below 1,000 Hz, with relatively long signals (pulses) on the order of 60 sec, while MF sonars use frequencies greater than 1,000 Hz with relatively short signals on the order of 1 sec. SURTASS LFA sonars involve use of one slower-moving vessel operating

far from shore, as opposed to the faster-moving, multi-vessel MFA sonar training scenarios operating in closer proximity to shore that have been co-incident with strandings.

As discussed previously, Cox *et al.* (2006) provided a summary of common features shared by the stranding events related to MF sonar in Greece (1996), Bahamas (2000), and Canary Islands (2002). These included deep water close to land (such as offshore canyons), presence of an acoustic waveguide (surface duct conditions), and periodic sequences of transient pulses (*i.e.,* rapid onset and decay times) generated at depths less than 32.8 ft (10 m) by sound sources moving at speeds of 2.6 m/s (5.1 knots) or more during sonar operations (D'Spain *et al.,* 2006). These features are not similar to LFA sonar activities. First, the Navy will not test and train with SURTASS LFA sonar such that RLs are greater than 180 dB within 22 km (12 nmi) of any coastline, ensuring that sound levels are at reduced levels at a sufficient distance from land. Secondly, when transmitting, the ship typically operates at 1.5–2.5 m/s (3–5 knots), speeds that are less than those found in Cox *et al.* (2009). Finally, the center of the vertical line array (source) is at a depth of approximately 400 ft (121.9 m), reducing the sounds that are transmitted at depths above 32.8 ft (10 m). Also, the LFA sonar signal is transmitted at depths well below 32.8 ft (10 m). While there was an LF component in the Greek stranding in 1996, only MF components were present in the strandings in the Bahamas in 2000, Madeira in 2000, and the Canary Islands in 2002. The International Council for the Exploration of the Sea (ICES) in its ''Report of the Ad-Hoc Group on the Impacts of Sonar on Cetaceans and Fish'' raised the same issues as Cox *et al.* (2006), stating that the consistent association of MF sonar in the Bahamas, Madeira, and Canary Islands strandings suggest that it was the MF component, not the LF component, in the NATO sonar that triggered the Greek stranding of 1996 (ICES, 2005). The ICES (2005) report concluded that no strandings, injury, or major behavioral change have been associated with the exclusive use of LF sonar.

Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below.

Behavioral Responses to Vessels (Movement and Noise)

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. As discussed previously, behavioral responses are context-dependent, complex, and influenced to varying degrees by a number of factors. For example, an animal may respond differently to a sound emanating from a ship that is moving towards the animal than it would to an identical received level coming from a vessel that is moving away, or to a ship traveling at a different speed or at a different distance from the animal. In cases where vessels actively approach marine mammals (*e.g.,* whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003, 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003, 2004; Heenehan *et al.,* 2016). However, at greater distances, the nature of vessel movements could also potentially have no, or very little, effect on the animal's response to the sound. In those cases where there is a busy shipping lane or a large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (*e.g.,* killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In any case, a full description of the suite of factors that elicited a behavioral response would require a mention of the vicinity, speed and movement of the vessel, and other factors. A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.* (1995) provides the following assessment regarding cetacean reactions to vessel traffic:

Toothed whales: Toothed whales sometimes show no avoidance reaction to vessels, and may even approach them; however, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. Such avoidance may cause temporary displacement, but we know of no clear evidence of toothed whales abandoning significant parts of their range because of vessel traffic.

Baleen whales: Baleen whales seem to ignore low-level sounds from distant or stationary vessels, and some whales even approach the sources of these sounds. When approached slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. However, in response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away, and avoidance is especially strong when a boat heads directly toward the whale.

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reactions varied when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (49.7 mi) away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: Habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (*e.g.,* approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (*e.g.,* avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks

dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that whales near shore generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed, even in regions with low vessel traffic. In locations with intense shipping and repeated approaches by boats (such as the whale-watching areas), more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.

Although the radiated sound from Navy vessels will be audible to marine mammals over a large distance, it is unlikely that animals will respond behaviorally (in a manner that NMFS would consider indicative of harassment under the MMPA) to low-level distant ship noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In addition, given that SURTASS LFA sonar-equipped vessels are small, relatively quiet, and the fact that they are not idle in one spot nor necessarily encircling to contain animals, a significant disruption of normal behavioral pattern that would make ship movements rise to the level of take by Level B harassment is unlikely. In light of these facts, NMFS does not expect the movements of the Navy's SURTASS LFA sonar vessels to result in take by Level B harassment.

Vessel Strike

Ship strikes of cetaceans can cause immediate death or major injury, which may eventually lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface, often to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some large, slow moving baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). Some smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and purposefully approach ships to ride the bow wave of large ships without any injury.

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision, with most deaths occurring when a vessel was traveling in excess of 14.9 mph (24.1 km/hr; 13 kts).

Jensen and Silber (2004) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these cases, 39 (or 67 percent) resulted in serious injury or death (19 of those resulted in serious injury as determined by blood in the water; propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae; hemorrhaging; massive bruising or other injuries noted during necropsy and 20 resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 kts, with the majority (79 percent) of these strikes occurring at speeds of 13 kts or greater. The average speed that resulted in serious injury or death was 18.6 kts. Pace and Silber (2005) 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 percent to 75 percent as vessel speed increased from 10 to 14 kts, and exceeded 90 percent at 17 kts. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death by pulling whales toward the vessel. While modeling studies have suggested that hydrodynamic forces pulling whales toward the vessel hull increase with increasing vessel speed (Clyne, 1999; Knowlton *et al.,* 1995), this is inconsistent with Silber *et al.* (2010), which demonstrated that there is no such relationship (*i.e.,* hydrodynamic forces are independent of speed).

The Jensen and Silber (2004) report notes that the database represents a minimum number of collisions, because the vast majority probably goes undetected or unreported. In contrast, while ship strike is not likely due to SURTASS LFA sonar training and testing activities due to the slow ship speeds and higly effective monitoring associated with these activities, Navy vessels are likely to detect any strike that would occur (due to monitoring), and they are required to report all ship strikes involving marine mammals. Overall, the percentage of Navy vessel traffic relative to overall large shipping vessel traffic is very small (on the order of two percent). Moreover, as mentioned previously, there are currently only four SURTASS LFA sonar vessels, which would equate to an extremely small percentage of the total vessel traffic. Although the Navy does anticipate additional vessels beginning in year 2024 (year 5), it is not reasonable to assume additional vessels would substantially add to the total vessel traffic.

The Navy's testing and training activities of SURTASS LFA sonar vessels is extremely small in scale compared to the number of commercial ships transiting at higher speeds in the same areas on an annual basis. The probability of vessel and marine mammal interactions occurring during SURTASS LFA sonar activities is unlikely due to the surveillance vessel's slow operational speed, which is typically 3.4 mph (5.6 km/hr; 3 kts). Outside of SURTASS LFA sonar activities, each vessel's cruising speed would be a maximum of approximately 11.5 to 14.9 mph (18.5 to 24.1 km/hr; 10 to 13 kts) which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist *et al.,* 2001).

As a final point, the SURTASS LFA surveillance vessels have a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: The catamaran-type split hull shape and enclosed propeller system of the Navy's T–AGOS ships; the bridge of T–AGOS ships positioned forward of the centerline, offering good visibility ahead of the bow and good visibility aft to visually monitor for marine mammal presence; lookouts posted during activities scan the ocean for marine mammals and must report visual alerts of marine mammal presence to the Deck Officer; lookouts receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea; and SURTASS LFA vessels travel at low speed (3–4 kts (approximately 3.4 mph; 5.6 km/hr)) with deployed arrays. Lastly, the use of passive and active acoustic monitoring for marine mammals as mitigation measures to monitor for marine mammals along with visual marine mammal observers would detect cetaceans well in advance of any

potential ship strike distance during SURTASS LFA sonar training and testing activities (for a thorough discussion of mitigation measures, please see the Proposed Mitigation section later in this document).

Due to the reasons described above (low probability of vessel/marine mammal interactions; relatively slow vessel speeds; and high probability of detection due to applied mitigation measures), and the fact that there have been no ship strikes in the 17-year history of SURTASS LFA sonar activities, the Navy and NMFS have determined that take of marine mammals by vessel strike is highly unlikely. Therefore, the Navy has not requested any take of marine mammals due to ship strike, nor is NMFS considering any authorization of take due to ship strike.

Results From Past Monitoring

From the commencement of SURTASS LFA sonar use in 2002 through the present, neither LFA sonar, nor operation of the T–AGOS vessels, has been associated with any mass or individual strandings of marine mammals temporally or spatially. In addition, the Navy's required monitoring reports indicate that there have been no apparent avoidance reactions observed, and no takes by Level A harassment due to SURTASS LFA sonar since its use began in 2002. In summary, results of the analyses conducted for SURTASS LFA sonar and the previous 17 years of documented results support the determination that the only takes anticipated would be short-term Level B harassment of affected marine mammal stocks.

Effects on Marine Mammal Habitat Including Prey

Anticipated Effects on Habitat Use—SURTASS LFA sonar activities would not affect the physical characteristics of marine mammal habitats. Based on the following information; the supporting information included in the Navy's application; the 2001, 2007, 2012, and 2017 NEPA documents; and 2018 DSEIS/SOEIS, NMFS has preliminarily determined that SURTASS LFA sonar activities are not likely to adversely impact marine mammal habitat use. For reasons described above, unless the sound source is stationary and/or continuous over a long duration in one area, the effects of the introduction of sound into the environment are generally considered to have a less severe impact on marine mammal habitat than actions involving physical alteration of the habitat. Marine mammals may be temporarily displaced from areas where SURTASS LFA training and testing activities are occurring to avoid noise exposure (see above), *i.e.,* due to impacts on acoustic habitat, but the habitat will not be physically altered and will likely be available for use again after the activities have ceased or moved out of the area. In addition, pings from SURTASS LFA sonar are very sporadic and are not generally repeated in the exact same area. SURTASS LFA training and testing activities would not result in the deposition of materials, change bathymetry, strike/modify features, or cause any physical alterations to marine mammal habitat.

Anticipated Impacts on Prey Species (Invertebrates and Fish)—The Navy's proposed SURTASS LFA sonar activities could potentially affect marine mammal habitat through the introduction of pressure and sound into the water column, which in turn could impact prey species of marine mammals. Among invertebrates, only cephalopods (octopus and squid) and decapods (lobsters, shrimps, and crabs) are known to sense LF sound (Packard *et al.,* 1990; Budelmann and Williamson, 1994; Lovell *et al.,* 2005; Mooney *et al.,* 2010). Popper and Schilt (2008) stated that, like fish, some invertebrate species produce sound, possibly using it for communications, territorial behavior, predator deterrence, and mating. Well known sound producers include the lobster (*Panulirus* spp.) (Latha *et al.,* 2005), and the snapping shrimp (*Alpheus heterochaelis*) (Herberholz and Schmitz, 2001).

Andre *et al.* (2011) exposed four cephalopod species (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii)* to two hours of continuous sound from 50 to 400 Hz at 157 ± 5 dB re: 1 μPa. They reported lesions to the sensory hair cells of the statocysts of the exposed animals that increased in severity with time. These results indicate that cephalopods are particularly sensitive to low-frequency sound. The SURTASS DSEIS/SOEIS (Chapter 4) notes that a follow-on study was conducted with Mediterranean and European squid (*Octopus vulgaris,* and *Ilex coindetii*) that included controls (Solé *et al.,* 2013), which found a similar result as Andre *et al.* (2011) with permanent and substantial alteration of the sensory hair cells of the statocysts. Aguilar de Soto *et al.* (2013) exposed New Zealand scallop larvae (*Pecten novaezeandiae*) to recorded signals from a seismic airgun survey every three seconds for up to 70 hours. They found a delay in development and malformations of the larvae in the noise-exposed samples. However, SURTASS LFA sonar has none of the same characteristics as the acoustic sources used in these studies. The time sequence of exposure from low-frequency sources in the open ocean would be about once every 10 to 15 min for SURTASS LFA sonar. Therefore, the study's sound exposures were longer in duration and higher in energy than any exposure a marine mammal would likely ever receive from SURTASS LFA sonar and acoustically very different than a free field sound to which animals would be exposed in the real world. SURTASS LFA sonar activities would only be expected to have a lasting impact on these animals if they are within a few tens of meters from the source, which is not anticipated to occur due to monitoring and mitigation measures described below. In conclusion, NMFS does not expect any short- or long-term effects to invertebrates from SURTASS LFA sonar activities.

The SURTASS DSEIS/SOEIS includes a detailed discussion of the effects of active sonar on marine fish and several studies on the effects of both Navy sonar and seismic airguns that are relevant to potential effects of SURTASS LFA sonar on *osteichthyes* (bony fish). In the most pertinent of these, the Navy funded independent scientists to analyze the effects of SURTASS LFA sonar on fish (Popper *et al.,* 2007; Halvorsen *et al.,* 2006) and on the effects of SURTASS LFA sonar on fish physiology (Kane *et al.,* 2010).

Several studies on the effects of SURTASS LFA sonar sounds on three species of fish (rainbow trout, channel catfish, and hybrid sunfish) examined long-term effects on sensory hair cells of the ear. In all species, even up to 96 hours post-exposure, there were no indications of damage to sensory cells (Popper *et al.,* 2005a, 2007; Halvorsen *et al.,* 2006). Recent results from direct pathological studies of the effects of LFA sounds on fish (Kane *et al.,* 2010) provide evidence that SURTASS LFA sonar sounds at relatively high received levels (up to 193 dB re: 1 μPa at 1 m) have no pathological effects or short- or long-term effects to ear tissue on the species of fish that have been studied. Therefore, the transmission of SURTASS LFA sonar is unlikely to impact fish populations, and thus would not result in indirect effects on marine mammals by affecting their prey base.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is proposing to authorize, which is based on the amount

of take that NMFS anticipates could or is likely to occur, depending on the type of take and the methods used to estimate it, as described in detail below. NMFS coordinated closely with the Navy in the development of their incidental take application, and preliminarily agrees that the methods the Navy has put forth described herein to estimate take (including the model, thresholds, and density estimates), and the resulting numbers estimated for authorization, are appropriate and based on the best available science.

Level B Harassment is the only means of take expected to result from these activities. For military readiness activities, the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavior patterns, including but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

As described previously in the Potential Effects of the Specified Activity on Marine Mammals and their Habitat section, based on the specified activity operational parameters and proposed mitigation, only Level B Harassment is expected to occur and therefore proposed to be authorized. Based on the nature of the activities and the anticipated effectiveness of the mitigation measures, take by Level A Harassment, serious injury, or mortality is neither anticipated nor proposed to be authorized.

Generally speaking, for acoustic impacts we estimate the amount and type of harassment by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be taken by Level B harassment (in this case, as defined in the military readiness definition of Level B harassment included above) or incur some degree of temporary or permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day or event; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities or events. Below, we describe these components in more detail, as well as the model the Navy used to incorporate these components to predict impacts, and present the take estimate.

Density Estimates

To derive density estimates, direct estimates from line-transect surveys that occurred in or near each of the 15 modeled areas (described in the Description of Marine Mammals in the Area of the Specified Activities section above) were utilized first (*e.g.,* Bradford *et al.,* 2017). When density estimates were not available from a survey in the Study Area, density estimates from a region with similar oceanographic characteristics were extrapolated to the operational area. Densities for some model areas were also derived from the Navy's Marine Species Density Database (DoN, 2018). Last, density estimates are usually not available for rare marine mammal species or for those that have been newly defined (*e.g.,* Deraniyagala's beaked whale). For such species, a low density estimate of 0.0001 animals per square kilometer (animals/km^2) was used in the risk analysis to reflect the low probability of occurrence in a specific model area. Further, density estimates are sometimes pooled for species of the same genus if sufficient data are not available to compute a density for individual species or the species are difficult to distinguish at sea. This is often the case for beaked whales (*Mesoplodon* spp) as well as the pygmy and dwarf sperm whales (*Kogia* spp), which is why densities were pooled for these species in certain model areas. Density estimates are available for these species groups rather than the individual species in model areas 1, 2, 3, 5, 6, and 7 for *Kogia* spp, and in model area 8 for *Mesoplodon* spp. Density information is provided in Tables 2–16 above, and is also available in the Navy's application (Table 3–2, Pages 3–6 through 3–25).

SURTASS LFA Sonar Behavioral Response Function

The Navy uses a behavioral response function to estimate the number of behavioral responses that would qualify as Level B behavioral harassment under the MMPA. A wide range of behavioral reactions may qualify as Level B harassment under the MMPA, including but not limited to avoidance of the sound source, temporary changes in vocalizations or dive patterns, temporary avoidance of an area, or temporary disruption of feeding, migrating, or reproductive behaviors. The estimates calculated using the behavioral response function do not differentiate between the different types of potential behavioral reactions, nor do the estimates provide information regarding the potential fitness or other biological consequences of the reactions on the affected individuals.

The definition of Level B harassment for military readiness activities contemplates the disruption of behavioral patterns to the point where they are abandoned or significantly altered. It is difficult to predict with certainty, given existing data, when exposures that are generally expected are likely to result in significantly altered or abandoned behavioral patterns. Therefore, the Navy's take estimates capture a wider range of impacts, including less significant responses. Moreover, NMFS does not assume that each instance of Level B harassment modeled by the Navy will have, or is likely to have, an adverse impact on an individual's fitness. Rather, NMFS considers the available scientific evidence to determine the likely nature of the modeled behavioral responses and the potential fitness consequences for affected individuals in its negligible impact evaluation. Accordingly, we consider application of this Level B harassment threshold as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered (*i.e.,* Level B harassment). Because this is the most appropriate method for estimating Level B harassment given the best available science and uncertainty on the topic, it is these numbers of Level B harassment by behavioral disturbance that are analyzed in the *Analysis and Negligible Impact Determination* section and are being proposed for authorization.

Estimates of Potential Marine Mammal Exposure

The Navy's acoustic impact analysis for marine mammals represents an evolution that builds upon the analysis and methodology documented in previous SURTASS LFA sonar NEPA efforts (DoN, 2001; 2007; 2012; and 2017), and includes updates of the most current acoustic thresholds and methodology to assess auditory impacts (NMFS, 2018). A detailed discussion of the acoustic impact analysis is provided in Appendix B of the SURTASS DSEIS/SOEIS, but is summarized here.

Using the Acoustic Integration Model (AIM), the Navy modeled 15 representative model areas in the central and western North Pacific and eastern Indian Oceans, representing the acoustic regimes and marine mammal species that may be encountered during SURTASS LFA sonar training and testing activities. Modeling was

conducted for one 24-hour period in each of the four seasons in each model area. To predict acoustic exposure, the LFA sonar ship was simulated traveling in a triangular pattern at a speed of 4 knots (kt) (7.4 kilometers per hour (kph), for eight hours in each leg of the triangle. The duration of the LFA sonar transmission was modeled as 24 hours, with a signal duration of 60 seconds and a duty cycle of 10 percent (*i.e.,* the source transmitted for 60 seconds every 10 minutes for 24 hours, which equates to 2.4 active transmission hours and is representative of average actual transmission times based on the past 17 years of SURTASS LFA sonar activities).

The acoustic field around the LFA sonar source was predicted by the Navy standard parabolic equation propagation model using the defined LFA sonar operating parameters. Each marine mammal species potentially occurring in a model area in each season was simulated by creating animats (simulated animals) programmed with behavioral values describing their dive and movement patterns. AIM then integrates the acoustic field created from the underwater transmission of LFA sonar with the three-dimensional (3D) movement of marine mammals to estimate their potential for sonar exposure at each 30-second timestep within the 24-hour modeling period. Thus, the output of AIM is the time history of exposure for each animat.

The Navy assesses the potential impacts on marine mammals by predicting the sound field that a given marine mammal species/stock could be exposed to over time in a potential model area. This is a multi-part process involving: (1) The ability to measure or estimate an animal's location in space and time; (2) the ability to measure or estimate the three-dimensional sound field at these times and locations; (3) the integration of these two data sets into the acoustic impact model to estimate the total acoustic exposure for each animal in the modeled population; and (4) the conversion of the resultant cumulative exposures for a modeled population into an estimate of the risk of a potential injury (*i.e.,* Level A harassment (PTS)), TTS, or disruption of natural behavioral patterns (*i.e.,* a take estimate for Level B harassment).

To estimate the potential impacts for each marine mammal stock on an annual basis, several calculation steps are required. First, the potential impact for one LFA sonar transmission hour is calculated. Second, the number of LFA sonar transmission hours that may occur in each model area for each activity is determined. The third step is to determine the number of model areas in which each stock may occur for each activity, and the fourth step is to select the maximum per-hour impact for each stock that may occur in the model areas for that activity. The final step is to multiply the results of steps two, three, and four to calculate the potential annual impacts per activity, which are then summed across the stocks for a total potential impact for all individual activities. The number of individual marine mammals that may be taken over the seven-year period of the proposed SURTASS LFA sonar training and testing activities was estimated by multiplying the maximum number of instances of exposure for each species/stock calculated annually for each of the two transmission scenarios (496 transmission hours in years 1–4 and 592 transmission hours in years 5–7), and then adding these to calculate a total estimate. For example, for the WNP blue whale, four years of 496 transmission hours (for years 1–4) resulted in 90 Level B harassment takes/year and three years of 592 transmission hours (for years 5–7) resulted in 123 Level B harassment takes/year. Multiplying 90 takes/year by 4 years equals 360 Level B harassment takes for the 496 transmission hour scenario, and multiplying 123 takes/year by 3 years equals 369 Level B harassment takes for the 592 transmission hour scenario. The final step is adding the totals for the two transmission scenarios to arrive at a total (360 + 369 = 729 Level B harassment takes over the 7-year period for WNP blue whales). For additional detail on modelling and take estimation, please refer to Chapter 6.6 (Quantitative Impact Analysis for Marine Mammals) of the Navy's application and Appendix B of the SURTASS DSEIS/SOEIS.

With the implementation of the three-part monitoring programs (visual, passive acoustic, and HF/M3 monitoring, as discussed below), NMFS and the Navy do not expect that marine mammals would be injured by SURTASS LFA sonar because a marine mammal is likely to be detected and active transmissions suspended or delayed to avoid injurious exposure. The probability of detection of a marine mammal by the HF/M3 system within the LFA sonar mitigation zone approaches 100 percent over the course of multiple pings (see the 2001 FOEIS/EIS, Subchapters 2.3.2.2 and 4.2.7.1 for the HF/M3 sonar testing results as well as section 5.4.3 of the SURTASS 2018 DSEIS/SOEIS for a summary of the effectiveness of the HF/M3 system). Quantitatively, modeling output shows zero takes by Level A harassment for all marine mammal stocks in all representative mission areas with mitigation applied. As noted above, all hearing groups of marine mammals except LF cetaceans would need to be within 22 ft (7 m) of the LFA sonar source for an entire LFA transmission (60 seconds), and a LF cetacean would need to be within 135 ft (41 m) for an entire LFA transmission to potentially experience PTS. This is unlikely to occur, especially given the mitigation measures in place and the Navy's proven effectiveness at detecting marine mammals well outside of this range so that shut down measures would be implemented well before marine mammals would be within these ranges. Again, NMFS notes that over the course of the previous three rulemakings from 2002 to 2017, and during the Navy's training and testing activities during the NDE from 2017 to the present, there have been no reported or known incidents of Level A harassment of any marine mammal. This is due to the fact that it would be highly unlikely that a marine mammal would remain close enough to the vessel to experience Level A harassment (see discussion in *Threshold Shift* subsection of the Potential Effects of the Specified Activity on Marine Mammals and their Habitat section above), in combination with the Navy's highly effective detection of marine mammals and shutting down SURTASS LFA sonar prior to the animals entering the Level A harassment zone. Therefore, NMFS does not propose to authorize any Level A takes for any marine mammal species or stocks over the course of the 7-year regulations. Marine mammals could experience TTS at farther distances, but would still need to be within the shutdown distance for that to happen. The distances to the TTS thresholds are less than 50 ft (15 m) for MF and HF cetaceans and otariids; 216 ft (66 m) for phocids; and 1,354 ft (413 m) for LF cetaceans if an animal were to remain at those distances for an entire LFA sonar signal (60 sec). While it is likely that mitigation measures would also avoid TTS, some small subset of the animals may also experience TTS. Any TTS incurred would likely be of a low level and of short duration because we do not expect animals to be exposed for long durations close to the source.

Of note, the estimated number of Level B harassment takes does not necessarily equate to the number of individual animals the Navy expects to harass (which is lower), but rather to the instances of take (*i.e.,* exposures above the Level B harassment threshold) that are anticipated to occur over the seven-year period. Some individuals may

experience multiple instances of take (meaning over multiple days) over the course of the year, while some members of a species or stock may not experience take at all, which means that the number of individuals taken is smaller than the total estimated takes. In other words, where the instances of take exceed the number of individuals in the population, repeated takes (on more than one day) of some individuals are predicted. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. However, because of the nature of the SURTASS LFA activities (small number of continuously moving vessels spread over a very large area), there are likely fewer repeated takes of the same individuals than would be expected from other more localized or stationary activities.

More detailed information for each of the steps to quantify take estimates, as well as an illustrative example, are provided in section 6.6 of the Navy's application (Quantitative Impact Analysis for Marine Mammals). A more thorough description of the impact analysis is also provided in the Draft SEIS/SOEIS (DoN, 2018), specifically section 4.5.2.1.3, Marine Mammals (Quantitative Impact Analysis for Marine Mammals subsection) and Appendix B (Marine Mammal Impact Analysis). NMFS has reviewed this information and has accepted the Navy modeling procedure and results. The total maximum potential impact on an annual basis for years 1–4 and years 5–7 as well as the total overall takes for the 7-year period covered by the proposed rulemaking are presented in Table 18 below. These are considered conservative estimates because they are based on the maximum potential impact to a stock across all model areas in which an activity may occur. Therefore, if an activity occurs in a different model area than the area where the maximum potential impact was predicted, the actual potential impact may be less than estimated. However, since the Navy cannot forecast where a specific activity may be conducted this far in advance, this maximum estimate provides the Navy with the flexibility to conduct its training and testing activities across all modeled areas identified for each activity.

TABLE 18—MAXIMUM TOTAL ANNUAL MMPA LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION FOR YEARS 1–4 AND 5–7, AND TOTAL FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR

Species	Stock [1]	Maximum annual Level B harassment, years 1–4		Maximum annual Level B harassment, years 5–7		Total overall Level B harassment for 7-year period
		Instances	Percent species or stock	Instances	Percent species or stock	
Antarctic minke whale	ANT	0	0.00	0	0.00	0
Blue whale	CNP	3	2.39	4	2.85	24
	NIND	0	0.00	1	0.00	3
	WNP	90	0.90	123	1.14	729
	SIND	1	0.07	1	0.07	7
Bryde's whale	ECS	14	10.28	19	14.13	113
	Hawaii	5	0.62	6	0.74	38
	WNP	378	1.94	437	2.26	2,823
	NIND	8	0.07	10	0.10	62
	SIND	7	0.05	9	0.07	55
Common minke whale	Hawaii	572	2.30	682	2.74	4,334
	IND	1,271	0.43	1,748	0.59	10,328
	WNP JW	3	0.12	5	0.17	27
	WNP OE	2,127	8.59	2,404	9.71	15,720
	YS	189	4.20	250	5.57	1,506
Fin whale	ECS	9	1.80	12	2.47	72
	Hawaii	3	2.30	4	2.74	24
	IND	0	0.00	0	0.00	0
	SIND	22	0.05	30	0.07	178
	WNP	2,558	27.55	3,455	37.23	20,597
Humpback whale	CNP stock and Hawaii DPS	487	4.85	611	6.10	3,781
	WAU stock and DPS	1	0.00	1	0.00	7
	WNP stock and DPS	3,103	233.84	4,266	321.49	25,210
North Pacific right whale	WNP	89	9.57	122	13.15	722
Omura's whale	NIND	8	0.07	10	0.10	62
	SIND	5	0.04	7	0.05	41
	WNP	14	0.81	16	0.95	104
Sei whale	Hawaii	19	4.78	22	5.70	142
	SIND	0	0.00	0	0.00	0
	NP	3,172	45.37	4,361	62.37	25,771
	NIND	4	0.04	5	0.05	31
Western North Pacific gray whale.	WNP stock and Western DPS.	0	0.00	1	0.44	3
Baird's beaked whale	WNP	2,747	48.26	3,777	66.36	22,319
Blainville's beaked whale	Hawaii	35	1.83	47	2.40	281
	WNP	269	3.30	311	3.82	2,009
	IND	47	0.27	65	0.37	383
Common bottlenose dolphin	4-Islands	5	2.48	6	2.96	38
	Hawaii Island	0	0.00	0	0.00	0
	Hawaii Pelagic	95	0.41	114	0.49	722
	IA	104	0.11	140	0.15	836

TABLE 18—MAXIMUM TOTAL ANNUAL MMPA LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION FOR YEARS 1–4 AND 5–7, AND TOTAL FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR—Continued

Species	Stock [1]	Maximum annual Level B harassment, years 1–4		Maximum annual Level B harassment, years 5–7		Total overall Level B harassment for 7-year period
		Instances	Percent species or stock	Instances	Percent species or stock	
	IND	1,128	0.14	1,551	0.20	9,165
	Japanese Coastal	1,686	47.94	1,789	50.86	12,111
	Kauai/Niihau	13	7.16	16	8.55	100
	Oahu	38	5.17	46	6.17	290
	WNP Northern Offshore	581	0.57	799	0.78	4,721
	WNP Southern Offshore	2,726	6.63	3,063	7.45	20,093
	WAU	635	21.16	873	29.09	5,159
Common dolphin	IND	52	0.00	72	0.00	424
	WNP	203,871	12.24	275,079	16.08	1,640,721
Cuvier's beaked whale	Hawaii	22	3.03	26	3.62	166
	IND	231	0.85	317	1.17	1,875
	SH	77	0.11	106	0.15	626
	WNP	6,946	7.78	8,980	10.04	54,724
Dall's porpoise	SOJ dalli type	614	0.36	845	0.49	4,991
	WNP dalli ecotype	22,056	13.62	30,327	18.72	179,205
	WNP truei ecotype	487	0.28	670	0.39	3,958
Deraniyagala's beaked whale.	IND	158	0.92	217	1.27	1,283
	NP	190	0.77	222	0.91	1,426
Dwarf sperm whale	Hawaii	655	3.72	782	4.44	4,966
	IND	3	0.05	4	0.07	24
	WNP	486	0.14	635	0.18	3,849
False killer whale	Hawaii Pelagic	58	3.72	69	4.44	439
	IA	252	2.59	341	3.51	2,031
	IND	12	0.01	16	0.00	96
	Main Hawaiian Islands Insular stock and DPS.	1	0.41	1	0.49	7
	Northwestern Hawaiian Islands.	0	0.00	0	0.00	0
	WNP	1,350	8.15	1,596	9.63	10,188
Fraser's dolphin	CNP	546	3.24	686	4.06	4,242
	Hawaii	1,944	3.79	2,320	4.52	14,736
	IND	93	0.05	128	0.07	756
	WNP	2,287	1.16	2,559	1.29	16,825
Ginkgo-toothed beaked whale.	IND	12	0.07	16	0.10	96
	NP	283	1.21	329	1.40	2,119
Harbor porpoise	WNP	366	1.17	503	1.61	2,973
Hubbs' beaked whale	NP	26	0.11	36	0.15	212
Indo-Pacific bottlenose dolphin.	IND	11	0.14	16	0.20	92
Killer whale	Hawaii	6	4.41	8	5.26	48
	IND	397	3.15	546	4.33	3,226
	WNP	10,470	85.37	14,387	117.31	85,041
Kogia spp.[2]	WNP	1,317	0.31	1,494	0.35	9,750
Longman's beaked whale	Hawaii	739	5.01	882	11.59	5,602
	IND	325	1.92	447	2.64	2,641
	WNP	471	6.14	574	7.50	3,606
Melon-headed whale	Hawaiian Islands	181	2.07	216	2.47	1,372
	IND	402	0.64	552	0.88	3,264
	Kohala Resident	9	0.41	11	0.49	69
	WNP	1,605	2.87	1,823	3.27	11,889
Mesoplodon spp.[2]	WNP	10	0.05	14	0.07	82
Northern right whale dolphin	NP	0	0.00	0	0.00	0
Pacific white-sided dolphin	NP	9,530	1.05	12,890	1.41	76,790
Pantropical spotted dolphin	4-Islands	32	14.40	38	17.18	242
	Hawaii Island	23	10.26	27	12.25	173
	Hawaiian Pelagic	297	0.55	355	0.66	2,253
	IND	311	0.05	428	0.07	2,528
	Oahu	23	10.54	28	12.58	176
	WNP	5,105	3.95	5,883	4.53	38,069
Pygmy killer whale	Hawaii	393	3.72	469	4.44	2,979
	IND	60	0.27	82	0.37	486
	WNP	901	2.87	1,035	3.30	6,709
Pygmy sperm whale	Hawaii	266	3.72	318	4.44	2,018
	IND	0	0.00	0	0.00	0

TABLE 18—MAXIMUM TOTAL ANNUAL MMPA LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION FOR YEARS 1–4 AND 5–7, AND TOTAL FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR—Continued

Species	Stock [1]	Maximum annual Level B harassment, years 1–4		Maximum annual Level B harassment, years 5–7		Total overall Level B harassment for 7-year period
		Instances	Percent species or stock	Instances	Percent species or stock	
	WNP	203	0.07	265	0.09	1,607
Risso's dolphin	Hawaii	414	3.58	494	4.28	3,138
	IA	1,045	0.70	1,374	0.92	8,302
	WNP	4,347	3.07	4,914	3.47	32,130
	IND	4,621	1.01	6,354	1.39	37,546
Rough-toothed dolphin	Hawaii	213	0.28	254	0.33	1,614
	IND	41	0.00	57	0.00	335
	WNP	1,439	28.74	1,732	34.56	10,952
Short-finned pilot whale	Hawaii	396	2.00	473	2.38	3,003
	IND	1,526	0.59	2,098	0.81	12,398
	WNP Northern Ecotype	525	2.52	721	3.47	4,263
	WNP Southern Ecotype	5,683	18.03	6,303	19.99	41,641
Southern bottlenose whale	IND	22	0.00	31	0.00	181
Spade-toothed beaked whale.	IND	16	0.09	22	0.12	130
Sperm whale	Hawaii	106	2.34	126	2.80	802
	NIND	33	0.14	46	0.20	270
	NP	1,429	1.28	1,855	1.68	11,281
	SIND	16	0.07	22	0.10	130
Spinner dolphin	Hawaii Island	1	0.21	1	0.25	7
	Hawaii Pelagic	192	5.72	229	6.82	1,455
	IND	240	0.05	330	0.07	1,950
	Kauai/Niihau	83	13.85	99	16.53	629
	Kure/Midway Atoll	0	0.00	0	0.00	0
	Oahu/4-Islands	20	2.88	24	6.66	152
	Pearl and Hermes Reef	0	0.00	0	0.00	0
	WNP	574	0.00	721	0.00	4,459
Stejneger's beaked whale	WNP	201	2.49	276	3.42	1,632
Striped dolphin	Hawaii	269	0.41	321	0.49	2,039
	IND	5,059	0.75	6,957	1.03	41,107
	Japanese Coastal	3,366	17.18	3,571	18.23	24,177
	WNP Northern Offshore	267	0.07	367	0.10	2,169
	WNP Southern Offshore	3,282	6.28	3,729	7.13	24,315
Hawaiian monk seal	Hawaii	10	0.69	13	0.91	79
Northern fur seal	Western Pacific	8,475	1.71	11,653	2.35	68,859
Ribbon seal	NP	15,705	4.30	21,595	5.92	127,605
Spotted seal	Alaska stock/Bering Sea DPS.	80,722	17.53	110,993	24.10	655,867
	Southern stock and DPS	0	0.00	1	0.05	3
Steller sea lion	Western/Asian stock, Western DPS.	2	0.00	3	0.00	17

[1] ANT=Antarctic; CNP=Central North Pacific; NP=North Pacific; NIND=Northern Indian; SIND=Southern Indian; IND=Indian; WNP=Western North Pacific; ECS=East China Sea; WP=Western Pacific; SOJ=Sea of Japan; IA=Inshore Archipelago; WAU=Western Australia; YS=Yellow Sea; OE=Offshore Japan; OW=Nearshore Japan; JW=Sea of Japan/Minke; JE=Pacific coast of Japan; SH=Southern Hemisphere; DPS=distinct population segment.

[2] *Kogia* spp.: Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for Kogia spp. in Modeled Areas 1, 2, 3, 5, 6, and 7 (reported as pooled in Ferguson and Barlow, 2001 and 2003, and pooled). *Mesoplodon* spp.: No methods are available to distinguish between the species of Mesoplodon beaked whales in the WNP stocks (Blainville's beaked whale (*M. densirostris*), Perrin's beaked whale (*M. perrini*), Lesser beaked whale (*M. peruvianus*), Stejneger's beaked whale (*M. stejnegeri*), Gingko-toothed beaked whale (*M. gingkodens*), and Hubbs' beaked whale (*M. carlhubbsi)*) when observed during at-sea surveys (Carretta et al., 2018). As reported in Ferguson and Barlow, 2001 and 2003, data on these species were pooled. These six species are managed as one unit.

Proposed Mitigation

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse 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 subsistence uses'' (hereinafter referred to as ''LPAI'' or ''least practicable adverse impact''). NMFS does not have a regulatory definition for least practicable adverse impact. The NDAA for FY 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that a determination of least practicable adverse impact shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.''

Least Practicable Adverse Impact Standard

In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210, 1229 (D. Haw. 2015), the Court stated that NMFS ''appear[s] to think [it] satisfies] the statutory 'least practicable adverse impact' requirement

with a 'negligible impact' finding.'' More recently, expressing similar concerns in a challenge to the 2012 SURTASS LFA incidental take rule (77 FR 50290), the Ninth Circuit Court of Appeals in *Natural Resources Defense Council (NRDC)* v. *Pritzker,* 828 F.3d 1125, 1134 (9th Cir. 2016), stated, ''[c]ompliance with the 'negligible impact' requirement does not mean there [is] compliance with the 'least practicable adverse impact' standard.'' As the Ninth Circuit noted in its opinion, however, the Court was interpreting the statute without the benefit of NMFS' formal interpretation. We state here explicitly that NMFS is in full agreement that the ''negligible impact'' and ''least practicable adverse impact'' requirements are distinct, even though both statutory standards refer to species and stocks. With that in mind, we provide further explanation of our interpretation of least practicable adverse impact, and explain what distinguishes it from the negligible impact standard. This discussion is consistent with, and expands upon, previous rules we have issued, such as the Navy Gulf of Alaska rule (82 FR 19530; April 27, 2017); the Navy Atlantic Fleet Testing and Training rule (83 FR 57076; November 14, 2018); and the Navy Hawaii-Southern California Training and Testing rule (83 FR 66846; December 27, 2018).

Before NMFS can issue incidental take regulations under section 101(a)(5)(A) of the MMPA, it must make a finding that the total taking will have a ''negligible impact'' on the affected ''species or stocks'' of marine mammals. NMFS' and USFWS' implementing regulations for section 101(a)(5) both define ''negligible impact'' as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103 and 50 CFR 18.27(c)). Recruitment (*i.e.,* reproduction) and survival rates are used to determine population growth rates [1] and, therefore are considered in evaluating population level impacts.

As we stated in the preamble to the final rule for the incidental take implementing regulations, not every population-level impact violates the negligible impact requirement. The negligible impact standard does not require a finding that the anticipated take will have ''no effect'' on population numbers or growth rates: The statutory standard does not require that the same recovery rate be maintained, rather that no significant effect on annual rates of recruitment or survival occurs. The key factor is the significance of the level of impact on rates of recruitment or survival. (54 FR 40338, 40341–42; September 29, 1989).

While some level of impact on population numbers or growth rates of a species or stock may occur and still satisfy the negligible impact requirement—even without consideration of mitigation—the least practicable adverse impact provision separately requires NMFS to prescribe means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, 50 CFR 216.102(b), which are typically identified as mitigation measures.[2]

The negligible impact and least practicable adverse impact standards in the MMPA both call for evaluation at the level of the ''species or stock.'' The MMPA does not define the term ''species.'' However, Merriam-Webster Dictionary defines ''species'' to include ''related organisms or *populations* potentially capable of interbreeding.'' See *www.merriam-webster.com/dictionary/species* (emphasis added). The MMPA defines ''stock'' as a group of marine mammals of the same species or smaller taxa in a common spatial arrangement that interbreed when mature (16 U.S.C. 1362(11)). The definition of ''population'' is a group of interbreeding organisms that represents the level of organization at which speciation begins. *www.merriam-webster.com/dictionary/population.* The definition of ''population'' is strikingly similar to the MMPA's definition of ''stock,'' with both involving groups of individuals that belong to the same species and located in a manner that allows for interbreeding. In fact, the term ''stock'' in the MMPA is interchangeable with the statutory term ''population stock.'' (16 U.S.C. 1362(11). Both the negligible impact standard and the least practicable adverse impact standard call for evaluation at the level of the species or stock, and the terms ''species'' and ''stock'' both relate to populations; therefore, it is appropriate to view both the negligible impact standard and the least practicable adverse impact standard as having a population-level focus.

This interpretation is consistent with Congress's statutory findings for enacting the MMPA, nearly all of which are most applicable at the species or stock (*i.e.,* population) level. *See* 16 U.S.C. 1361 (finding that it is species and population stocks that are or may be in danger of extinction or depletion; that it is species and population stocks that should not diminish beyond being significant functioning elements of their ecosystems; and that it is species and population stocks that should not be permitted to diminish below their optimum sustainable population level). Annual rates of recruitment (*i.e.,* reproduction) and survival are the key biological metrics used in the evaluation of population-level impacts, and accordingly these same metrics are also used in the evaluation of population level impacts for the least practicable adverse impact standard.

Recognizing this common focus of the least practicable adverse impact and negligible impact provisions on the ''species or stock'' does not mean we conflate the two standards; despite some common statutory language, we recognize the two provisions are different and have different functions. First, a negligible impact finding is required before NMFS can issue an incidental take authorization. Although it is acceptable to use the mitigation measures to reach a negligible impact finding (*see* 50 CFR 216.104(c)), no amount of mitigation can enable NMFS to issue an incidental take authorization for an activity that still would not meet the negligible impact standard. Moreover, even where NMFS can reach a negligible impact finding—which we emphasize does allow for the possibility of some ''negligible'' population-level impact—the agency must still prescribe measures that will affect the least practicable amount of adverse impact upon the affected species or stock.

Section 101(a)(5)(A)(i)(II) requires NMFS to issue, in conjunction with its authorization, binding—and enforceable—restrictions (in the form of regulations) setting forth how the activity must be conducted, thus ensuring the activity has the ''least practicable adverse impact'' on the affected species or stocks and their habitat. In situations where mitigation is specifically needed to reach a negligible impact determination, section 101(a)(5)(A)(i)(II) also provides a mechanism for ensuring compliance with the ''negligible impact'' requirement. Finally, we reiterate that the least practicable adverse impact standard also requires consideration of measures for marine mammal habitat, with particular attention to rookeries, mating grounds, and other areas of similar significance, and for subsistence impacts, whereas the negligible impact

[1] A growth rate can be positive, negative, or flat.

[2] For purposes of this discussion, we omit reference to the language in the standard for least practicable adverse impact that says we also must mitigate for subsistence impacts because they are not at issue in this regulation.

standard is concerned solely with conclusions about the impact of an activity on annual rates of recruitment and survival.[3]

In *NRDC* v. *Pritzker,* the Court stated, ''[t]he statute is properly read to mean that even if population levels are not threatened *significantly,* still the agency must adopt mitigation measures aimed at protecting *marine mammals* to the greatest extent practicable in light of military readiness needs.'' *Id.* at 1134 (emphases added). This statement is consistent with our understanding stated above that even when the effects of an action satisfy the negligible impact standard (*i.e.,* in the Court's words, ''population levels are not threatened significantly''), still the agency must prescribe mitigation under the least practicable adverse impact standard. However, as the statute indicates, the focus of both standards is ultimately the impact on the affected ''species or stock,'' and not solely focused on or directed at the impact on individual marine mammals.

We have carefully reviewed and considered the Ninth Circuit's opinion in *NRDC* v. *Pritzker* in its entirety. While the Court's reference to ''marine mammals'' rather than ''marine mammal species or stocks'' in the italicized language above might be construed as a holding that the least practicable adverse impact standard applies at the individual ''marine mammal'' level, *i.e.,* that NMFS must require mitigation to minimize impacts to each individual marine mammal unless impracticable, we believe such an interpretation reflects an incomplete appreciation of the Court's holding. In our view, the opinion as a whole turned on the Court's determination that NMFS had not given separate and independent meaning to the least practicable adverse impact standard apart from the negligible impact standard, and further, that the Court's use of the term ''marine mammals'' was not addressing the question of whether the standard applies to individual animals as opposed to the species or stock as a whole. We recognize that while consideration of mitigation can play a role in a negligible impact determination, consideration of mitigation measures extends beyond that analysis. In evaluating what mitigation measures are appropriate, NMFS considers the potential impacts of the specified activities, the availability of measures to minimize those potential impacts, and the practicability of implementing those measures, as we describe below.

Implementation of Least Practicable Adverse Impact Standard

Given the *NRDC* v. *Pritzker* decision, we discuss here how we determine whether a measure or set of measures meets the ''least practicable adverse impact'' standard. Our separate analysis of whether the take anticipated to result from Navy's activities meets the ''negligible impact'' standard appears in the Analysis and Negligible Impact Determination section below.

Our evaluation of potential mitigation measures includes consideration of two primary factors:

(1) The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation; and

(2) The practicability of the measures for applicant implementation. Practicability of implementation may consider such things as cost, impact on activities, and, in the case of a military readiness activity, specifically considers personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. 16 U.S.C. 1371(a)(5)(A)(iii).

While the language of the least practicable adverse impact standard calls for minimizing impacts to affected species or stocks and their habitats, we recognize that the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS' analysis focuses on measures that are designed to avoid or minimize impacts on individual marine mammals that are likely to increase the probability or severity of population-level effects.

While direct evidence of impacts to species or stocks from a specified activity is rarely available, and additional study is still needed to understand how specific disturbance events affect the fitness of individuals of certain species, there have been improvements in understanding the process by which disturbance effects are translated to the population. With recent scientific advancements (both marine mammal energetic research and the development of energetic frameworks), the relative likelihood or degree of impacts on species or stocks may often be inferred given a detailed understanding of the activity, the environment, and the affected species or stocks. This same information is used in the development of mitigation measures and helps us understand how mitigation measures contribute to lessening effects (or the risk thereof) to species or stocks. We also acknowledge that there is always the potential that new information, or a new recommendation that we had not previously considered, becomes available and necessitates reevaluation of mitigation measures (which may be addressed through adaptive management) to see if further reductions of population impacts are possible and practicable.

In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability), and are carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. Analysis of how a potential mitigation measure may reduce adverse impacts on a marine mammal stock or species, consideration of personnel safety, practicality of implementation, and consideration of the impact on effectiveness of military readiness activities are not issues that can be meaningfully evaluated through a yes/no lens. The manner in which, and the degree to which, implementation of a measure is expected to reduce impacts, as well as its practicability in terms of these considerations, can vary widely. For example, a time/area restriction could be of very high value for decreasing population-level impacts (*e.g.,* avoiding disturbance of feeding females in an area of established biological importance) or it could be of lower value (*e.g.,* decreased disturbance in an area of high productivity but of less firmly established biological importance). Regarding practicability, a measure might involve restrictions in an area or time that impede the Navy's ability to certify a strike group (higher impact on mission effectiveness), or it could mean delaying a small in-port training event by 30 minutes to avoid exposure of a marine mammal to injurious levels of sound (lower impact). A responsible evaluation of ''least practicable adverse impact'' will consider the factors along these realistic scales. Accordingly, the greater the likelihood that a measure will contribute to reducing the probability or

[3] Outside of the military readiness context, mitigation may also be appropriate to ensure compliance with the ''small numbers'' language in MMPA sections 101(a)(5)(A) and (D).

severity of adverse impacts to the species or stock or their habitat, the greater the weight that measure is given when considered in combination with practicability to determine the appropriateness of the mitigation measure, and vice versa. We discuss consideration of these factors in greater detail below.

1. *Reduction of adverse impacts to marine mammal species or stocks and their habitat.*[4] The emphasis given to a measure's ability to reduce the impacts on a species or stock considers the degree, likelihood, and context of the anticipated reduction of impacts to individuals (and how many individuals) as well as the status of the species or stock.

The ultimate impact on any individual from a disturbance event (which informs the likelihood of adverse species- or stock-level effects) is dependent on the circumstances and associated contextual factors, such as duration of exposure to stressors. Though any proposed mitigation needs to be evaluated in the context of the specific activity and the species or stocks affected, measures with the following types of effects have greater value in reducing the likelihood or severity of adverse species- or stock-level impacts: Avoiding or minimizing injury or mortality; limiting interruption of known feeding, breeding, mother/young, or resting behaviors; minimizing the abandonment of important habitat (temporally and spatially); minimizing the number of individuals subjected to these types of disruptions; and limiting degradation of habitat. Mitigating these types of effects is intended to reduce the likelihood that the activity will result in energetic or other types of impacts that are more likely to result in reduced reproductive success or survivorship. It is also important to consider the degree of impacts that are expected in the absence of mitigation in order to assess the added value of any potential measures. Finally, because the least practicable adverse impact standard gives NMFS discretion to weigh a variety of factors when determining appropriate mitigation measures and because the focus of the standard is on reducing impacts at the species or stock level, the least practicable adverse impact standard does not compel mitigation for every kind of take, or every individual taken, if that mitigation is unlikely to meaningfully contribute to the reduction of adverse impacts on the species or stock and its habitat, even when practicable for implementation by the applicant.

The status of the species or stock is also relevant in evaluating the appropriateness of potential mitigation measures in the context of least practicable adverse impact. The following are examples of factors that may (either alone, or in combination) result in greater emphasis on the importance of a mitigation measure in reducing impacts on a species or stock: The stock is known to be decreasing or status is unknown, but believed to be declining; the known annual mortality (from any source) is approaching or exceeding the potential biological removal (PBR) level (as defined in 16 U.S.C. 1362(20)); the affected species or stock is a small, resident population; or the stock is involved in a UME or has other known vulnerabilities, such as recovering from an oil spill.

Habitat mitigation, particularly as it relates to rookeries, mating grounds, and areas of similar significance, is also relevant to achieving the standard and can include measures such as reducing impacts of the activity on known prey utilized in the activity area or reducing impacts on physical habitat. As with species- or stock-related mitigation, the emphasis given to a measure's ability to reduce impacts on a species or stock's habitat considers the degree, likelihood, and context of the anticipated reduction of impacts to habitat. Because habitat value is informed by marine mammal presence and use, in some cases there may be overlap in measures for the species or stock and for use of habitat.

We consider available information indicating the likelihood of any measure to accomplish its objective. If evidence shows that a measure has not typically been effective nor successful, then either that measure should be modified or the potential value of the measure to reduce effects should be lowered.

2. *Practicability.* Factors considered may include cost, impact on activities, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity (16 U.S.C. 1371(a)(5)(A)(iii)).

Proposed Mitigation Measures

As with other rulemakings for SURTASS LFA sonar, our consideration of mitigation under the LPAI standard was conducted at scales that take into account the entire rulemaking period and geographic scope of potential areas of SURTASS LFA sonar activities and the types of impacts that could occur under the rule. NMFS reviewed the proposed activities and the proposed mitigation measures as described in the Navy's LOA application and the measures added by NMFS to determine if they would satisfy the standard of LPAI on marine mammal species or stock(s) and their habitat. As described below, and in the SURTASS DSEIS/DOEIS (DoD, 2018), NMFS has preliminarily determined that the following mitigation measures would satisfy the LPAI standard:

(1) 2,000-yard LFA sonar mitigation and buffer zone—LFA sonar training and testing transmissions will be suspended if the Navy detects marine mammals within a distance of 2,000 yards (1.8 km; 1.1 mi; 1.0 nmi) of the LFA sonar source, which encompasses both the approximately 1-km distance of the 180 dB received level mitigation zone and an additional buffer, by any of the following detection methods:

(a) Visual monitoring;

(b) Passive acoustic monitoring; and

(c) Active acoustic monitoring.

(2) Geographic restrictions—LFA sonar training and testing will be conducted such that:

(a) The received level of SURTASS LFA sonar transmissions during training and testing events will not exceed 180 dB within 1 km seaward of any OBIA boundary, as presented in the Final Rule, during the indicated periods of biological importance;

(b) the received level of SURTASS LFA sonar transmissions will not exceed 180 dB within the Coastal Standoff Zone (22 km (12 nmi) from any land);

(c) no activities with the SURTASS LFA sonar system will occur within territorial seas of foreign nations, which are areas up to 12 nmi from shore, depending on the distance that individual nations claim; and

(d) no activities with the SURTASS LFA sonar system will occur within Hawaii state waters (out to 3 nmi) or in the waters of Penguin Bank and ensonification of Hawaii state waters will not be at levels above 145 dB.

Below, we discuss the proposed mitigation measures as agreed upon by the Navy and NMFS. Any mitigation, monitoring, or reporting measures finalized following consideration of public comments would be required by the final regulations and/or associated LOA. For additional details regarding the Navy's mitigation measures, please also see Chapter 5 in the SURTASS 2018 DSEIS/DOEIS.

[4] We recognize the least practicable adverse impact standard requires consideration of measures that will address minimizing impacts on the availability of the species or stocks for subsistence uses where relevant. Because subsistence uses are not implicated for this action, we do not discuss them. However, a similar framework would apply for evaluating those measures, taking into account the MMPA's directive that we make a finding of no unmitigable adverse impact on the availability of the species or stocks for taking for subsistence, and the relevant implementing regulations.

Proposed 2,000-Yard Mitigation Zone (Re-Evaluation of the 180-dB re 1 μPa (RMS) Zone)

The Navy has requested, and NMFS is proposing to include in this rule, a single, fixed 2,000-yard (yd) (0.99 nmi/1,829 m/1.83 km) mitigation zone rather than a combined mitigation and buffer zone (based on real-time propagation modeling) of nominally 1.08 nmi (2 km), which has been required in past rules. This modification will standardize and simplify Navy mitigation and monitoring implementation and includes consideration of updated information on marine mammal injury thresholds. The 180-dB re1μPa (RMS) threshold for the onset of potential injury has been used in the impact assessment for SURTASS LFA sonar since 2001, and the isopleth associated with that threshold has also previously informed the development of mitigation. However, NMFS' 2018 Acoustic Technical Guidance reflects the current state of scientific knowledge regarding the potential impacts of sound on marine mammal hearing. It specifies auditory weighted (SEL_{cum}) values for the onset of PTS (onset of injury) based on marine mammal hearing groups. The NMFS 2018 Acoustic Technical Guidance categorizes marine mammals into five generalized hearing groups with defined hearing ranges and presents the auditory weighting functions developed for each of these hearing groups, reflecting the best available data on hearing, impacts of sound on hearing, and data on equal latency.

When estimating the onset of injury (PTS), NMFS' Acoustic Technical Guidance defines weighted thresholds as sound exposure levels (SEL). As noted previously in the *Metrics Used in this Document* section, the new threshold and its associated metric incorporate a duration component, which means that it is not directly comparable to the previous 180-dB re1μPa (RMS) threshold. To determine what the SEL for each hearing group would be when exposed to a 60-second (the nominal time of an LFA sonar transmission, or one ping), 300 Hz (the center frequency in the possible transmission range of 100–500 Hz) SURTASS LFA sonar transmission, the appropriate auditory weighting function must be applied to account for each of the hearing group's sensitivity. Again, although direct comparisons are difficult, when a 60-second exposure is considered, applying the auditory weighting functions results in the thresholds increasing by approximately 1.5; 46; 56; 15; and 20 dB for the LF, MF, HF, PW, and OW hearing groups, respectively, above the baseline. Consequently, if mitigation is tied to preventing the same type of impact, the distance at which SURTASS LFA sonar transmissions should be mitigated for marine mammals would be the distance associated with LF cetaceans, as the mitigation range would be the greatest for this hearing group. Any mitigation measure developed for LF cetaceans based on PTS onset would be highly conservative for any other marine mammals potentially exposed to SURTASS LFA sonar transmissions.

Applying the duration of a single ping of SURTASS LFA sonar (60 seconds) would result in 17.8 dB being subtracted from the unweighted SEL_{cum} value of 200.5 dB for LF cetaceans, for an SPL of 182.7 dB re1μPa (RMS). The distance to this isopleth would be slightly smaller than that associated with the previously used 180 dB re1μPa (RMS) isopleth. If an LF cetacean was exposed to two full pings of SURTASS LFA sonar, the resulting SPL would be 179.7 dB re1μPa (RMS), which is very close to the 180 dB re1μPa (RMS) RL level, on which previous mitigation measures were based. This exposure is unlikely, as a marine mammal would have to be close to the LFA sonar array for an extended period (approximately 20 minutes) to experience two full pings. Although this is an unlikely scenario, the Navy proposes a mitigation zone that is basically equivalent to the previous zone based on 180 dB re1μPa (RMS) RL as the current mitigation zone for SURTASS LFA sonar training and testing activities in this rule, as described below.

In previous rules, prior to commencing and during SURTASS LFA sonar training and testing transmissions, the Navy determined (in real time) the propagation of LFA sonar signals in the ocean and the distance from the SURTASS LFA sonar source to the 180-dB isopleth (See Description of Real-Time SURTASS LFA Sonar Sound Field Modeling section of the application). The 180-dB isopleth defined the extent of the LFA sonar mitigation zone for marine mammals around the surveillance vessel. If a marine mammal entered the LFA sonar mitigation zone (or the 1-km buffer previously required by NMFS, as described below), the Navy implemented a suspension of SURTASS LFA sonar transmissions. This measure was included in prior rules to reduce or alleviate the likelihood that marine mammals would be exposed to levels of sound that may result in injury (PTS). However, due to the updated criteria in NMFS' 2018 Acoustic Technical Guidance (NMFS 2018), this 180-dB mitigation zone would not only preclude PTS, but almost all TTS and more severe behavioral reactions as well. While not an expansion of the mitigation, the mitigation is now considered more effective at reducing PTS and TTS compared to prior authorizations for SURTASS LFA sonar.

The Navy modeling of the sound field in near-real time conditions provided the information necessary to calculate the mitigation zone for which delay or suspension of LFA sonar transmissions would occur. Acoustic model updates were nominally made every 12 hrs, or as meteorological or oceanographic conditions change. If a marine mammal entered the calculated threshold distance (plus its associated buffer distance), the sonar operator notified the senior military member in charge, who would order the delay or suspension of transmissions. If it were predicted that the SPL threshold distances would change within the next 12-hr period, the senior military member in charge would also be notified in order to take the necessary action to ensure that the sound field criteria would not be exceeded.

As an added protective measure, NMFS previously required the Navy to include a ''buffer zone'' that extends an additional 1 km (0.62 mi; 0.54 nm) beyond the Navy's proposed 180-dB isopleth LFA sonar mitigation zone. This buffer typically coincides with the full detection range of the HF/M3 active sonar for mitigation monitoring (approximately 2 to 2.5 km; 1.2 to 1.5 mi; 1.1 to 1.3 nmi). Thus, implementation of this additional 1 km buffer zone increased the shutdown zone around the LFA sonar array and vessel and, given the highly effective monitoring capabilities (described below), ensured that no marine mammals are exposed to an SPL greater than approximately 174 dB re: 1 μPa. In past applications, the Navy has noted that this additional mitigation is practicable and the Navy has implemented this measure in previous authorizations. In addition, as noted above for the 180-dB mitigation zone, this buffer mitigation is more effective at reducing a broader range of impacts compared to prior authorizations due to the updated criteria in NMFS' Acoustic Technical Guidance (NMFS, 2018). The proposed 2,000 yd (1.83 km) single fixed mitigation/buffer zone would cover virtually all of the previous combined mitigation/buffer zone of nominally 1.08 nmi (2 km), since the difference between 2,000 yd and 2 km is only about 187 yd (or 0.09 nmi (167 m)). Likewise, the difference in the sound field of the combined mitigation/

buffer zones of 2,000 yd (1.83 km) versus 1.08 nmi (2,187 yd; 2 km) would also be negligible. At 2,000 yd (1.83 km), modeling shows that the sound field would be about 174.75 dB while at 1.08 nmi (2 km), the sound field would be 173.98 dB, which is a difference of only 0.77 dB. This very slight sound field difference would not be perceptible to a marine mammal.

In summary, Navy requested, and NMFS is proposing to include, a single, fixed, combined mitigation/buffer zone for SURTASS LFA sonar training and testing activities to standardize and simplify implementation of this monitoring requirement using standard Navy metrics (yards not meters). This measure will continue to ensure protection to marine mammals in all acoustic environments, even in the rare event of a strong acoustic duct in which the volume of water ensonified to 180 dB could be somewhat greater than 0.54 nmi (1 km) (DoN, 2001). With the combined mitigation/buffer zone of 2,000 yd (1.83 km), there is no potential for animals to be exposed to received levels greater than 180 dB rms, or levels above the new injury thresholds identified in NMFS acoustic thresholds, and, therefore, marine mammals are protected from both acoustic injury and more severe occurrences of Level B harassment.

Visual Mitigation Monitoring

Visual monitoring consists of daytime observations for marine mammals from the bridge of SURTASS LFA sonar vessels by lookouts (personnel trained in detecting and identifying marine mammals). Navy shipboard lookouts are highly qualified and experienced observers of the marine environment. Their operational duties require that they report all objects sighted on the water surface to the senior military member in charge (*e.g.,* trash, a periscope, marine mammals, sea turtles) and all disturbances (*e.g.,* surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. The objective of visual mitigation monitoring is to maintain location, distance, and movement information about marine mammals observed to ensure that none approach close enough to enter the 2,000-yard LFA mitigation/buffer zone.

Daylight is defined as 30 min before sunrise until 30 min after sunset. Visual monitoring would begin 30 min before sunrise or 30 min before the Navy deploys the SURTASS LFA sonar array. Lookouts will continue to monitor the area until 30 min after sunset or until recovery of the SURTASS LFA sonar array.

The lookouts will maintain a topside watch and marine mammal observation log during daytime activities that employ SURTASS LFA sonar in the active mode. These trained monitoring personnel maintain a topside watch and scan the water's surface around the vessel systematically with standard binoculars (7x) and with the naked eye. If the lookout sights a possible marine mammal, the lookout will use big-eye binoculars (25x) to confirm the sighting and potentially identify the marine mammal species. Lookouts will enter numbers and identification of marine mammals sighted into the log, as well as any unusual behavior. A designated ship's officer will monitor the conduct of the visual watches and periodically review the log entries.

If a lookout observes a marine mammal outside of the 2,000-yard LFA mitigation/buffer zone, the lookout will notify the senior military member in charge of the watch. The senior military member in charge shall then notify the HF/M3 active sonar operator to determine the range and projected track of the marine mammal. If the HF/M3 sonar operator or the lookout determines that the marine mammal will pass within the 2,000-yard LFA mitigation/buffer zone, the senior military member in charge shall order the delay or suspension of SURTASS LFA sonar training and testing transmissions when the animal enters the 2,000-yard LFA mitigation/buffer zone to prevent Level A harassment as well as reduce the potential for TTS and more severe behavioral responses.

If a lookout observes a marine mammal anywhere within the 2,000-yard LFA mitigation/buffer zone (required by NMFS), the senior military member in charge would be notified so that the LFA sonar training and testing transmissions would be immediately shut down or suspended. The lookout will enter his/her observations about sighted marine mammals into the log: Date/time; vessel name; geographic coordinates/position; type and number of marine mammals observed; assessment basis (*i.e.,* observed injury or behavioral response); bearing from vessel; whether activities were delayed, suspended, or terminated; and relevant narrative information.

Marine mammal biologists who are qualified in conducting at-sea marine mammal visual monitoring from surface vessels will train and qualify designated ship personnel to conduct at-sea visual monitoring. This training may be accomplished either in-person or via video training.

Passive Acoustic Mitigation Monitoring

For the second of the three-part mitigation monitoring measures, the Navy will conduct passive acoustic monitoring using the SURTASS towed horizontal line array to detect vocalizing marine mammals as an indicator of their presence. This system serves to augment the visual and active sonar detection systems, and is deployed and operated at all times in which the LFA sonar system could be utilized. If a passive acoustic technician detects a vocalizing marine mammal that may be potentially affected by SURTASS LFA sonar prior to or during transmissions, the technician will notify the senior military member in charge who will immediately alert the HF/M3 active sonar operators and the lookouts. The senior military member in charge will order the delay or suspension of SURTASS LFA sonar transmissions when the animal enters the 2,000-yard LFA mitigation/buffer zone as detected by either the HF/M3 sonar operator or the lookouts. The passive acoustic technician will record all contacts of marine mammals into a log.

Active Acoustic Mitigation Monitoring

Active acoustic monitoring uses the high-frequency marine mammal monitoring (HF/M3) sonar to detect, locate, and track marine mammals that could pass close enough to the SURTASS LFA sonar array to enter the 2,000-yard LFA sonar mitigation/buffer zone. HF/M3 acoustic monitoring may be used at all times of the day or night and begins 30 min before the first SURTASS LFA sonar transmission of a given training or testing activity is scheduled to commence and continues until the Navy terminates LFA sonar transmissions.

If the HF/M3 sonar operator detects a marine mammal contact outside the 2,000-yard LFA sonar mitigation/buffer zone, the HF/M3 sonar operator shall determine the range and projected track of the marine mammal. If the operator determines that the marine mammal will pass within the 2,000-yard LFA sonar mitigation/buffer zone, he/she shall notify the senior military member in charge. The senior military member in charge then immediately orders the delay or suspension of training and testing transmissions when the animal is predicted to enter the 2,000-yard LFA sonar mitigation/buffer zone.

If the HF/M3 sonar operator detects a marine mammal within the 2,000-yard LFA mitigation/buffer zone, he/she shall notify the senior military member in charge who will immediately order the delay or suspension of training and

testing transmissions. The HF/M3 sonar operator will record all contacts of marine mammals into the log.

Prior to full-power operations of the HF/M3 active sonar during SURTASS LFA sonar training and testing activities, the Navy will ramp up the HF/M3 sonar power level over a period of 5 min from the source level of 180 dB re 1 μPa at 1 m in 10-dB increments until the HF/M3 system attains full power (if required) to ensure that there are no inadvertent exposures of marine mammals to received levels greater than 180 dB re 1 μPa from the HF/M3 sonar. The Navy will not increase the HF/M3 sonar source level if any of the three monitoring methods detect a marine mammal during ramp-up. Ramp-up of the HF/M3 active sonar may continue once marine mammals are no longer detected by any of the three monitoring methods.

In situations where the HF/M3 sonar system has been powered down for more than 2 min during a training and testing event, the Navy will ramp up the HF/M3 sonar power level over a period of 5 min from the source level of 180 dB re 1 μPa at 1 m in 10-dB increments until the system attains full power.

NMFS' Additional 1-km Buffer Zone Around OBIAs

Similar to the previously-required 1-km buffer around the LFA Sonar Mitigation Zone, NMFS is proposing to require the Navy to include a ''buffer zone'' that extends an additional 1 km (0.62 mi; 0.54 nm) beyond the seaward boundary of any OBIA (discussed in ''Geographic Restrictions'' section immediately below). The Navy has noted that this additional mitigation is practicable in past applications and has implemented this measure in previous authorizations. In addition, as noted above for the 180-dB mitigation zone, this 1-km buffer mitigation is more effective at reducing a broader range of impacts compared to prior authorizations due to the updated criteria in NMFS' Acoustic Technical Guidance (NMFS, 2018).

Geographic Restrictions

As noted above, the Navy will implement geographic restrictions for SURTASS LFA sonar training and testing activities that entail restricting SURTASS LFA sonar activities within these designated areas such that the SURTASS LFA sonar-generated sound field will not exceed 180 dB re: 1 μPa (RL): (1) Within a 1-km seaward buffer of any finalized OBIAs for marine mammals, as required by NMFS; (2) observing a coastal standoff range restricting SURTASS LFA sonar training and testing activities such that the sound field will not exceed 180 dB re: 1μPa (RL) within 22 km (14 mi; 12 nmi) of any emergent land, including islands; (3) the Navy will not conduct SURTASS LFA sonar training and testing activities within the territorial seas of any foreign nation (distance ranging from 0 to 12 km, depending on distance claimed); and (4) the Navy will not operate SURTASS LFA sonar in Hawaii state waters (out to 3 nmi) or in waters of Penguin Bank to the 600-ft (183-m) isobath, and will ensure Hawaii state waters are not ensonified above 145 dB.

As with previous rulemakings for SURTASS LFA sonar, this rulemaking contains a consideration of geographic restrictions, including OBIAs. However, whereas the Navy previously considered SURTASS LFA sonar activities worldwide, they have narrowed the geographic scope of their current application to reflect only those areas of the world's oceans where the Navy anticipates conducting covered SURTASS LFA sonar activities (*i.e.,* training and testing in the central and western North Pacific and eastern Indian Oceans). Therefore, consideration of geographical restrictions is also limited to those areas of the world's oceans where the Navy anticipates conducting covered SURTASS LFA sonar activities, as discussed in more detail below.

Offshore Biologically Important Areas (Background)

Given the unique operational characteristics of SURTASS LFA sonar, Navy and NMFS developed the concept of geographical restrictions for SURTASS LFA sonar in the SURTASS LFA Sonar FOEIS/EIS (DoN, 2001) to include: Delineating a 12 nmi coastal standoff zone where received levels from SURTASS LFA sonar could not exceed 180 dB, and designating OBIAs, where warranted, for areas beyond this coastal standoff zone, wherein received levels could not exceed 180 dB. The coastal standoff and OBIAs are intended to reduce the likelihood and/or degree of impacts on affected marine mammal species or stocks. As noted in the 2012 Final Rule (77 FR 50290; August 20, 2012), over 80 percent of the existing and potential marine protected areas reviewed were within 12 nmi from a coastline, indicating the effectiveness of the coastal standoff as one of the primary mitigation measures for reducing potential impacts to marine mammals. OBIAs expand upon this protection by avoiding or minimizing impacts in areas beyond the coastal standoff distance where marine mammals are known to engage in specific behaviors that may lead to more severe impacts if interrupted; known to congregate in higher densities; and/or known to have a limited range and small abundance that creates more vulnerability for the stock as a whole. These criteria are important when determining whether mitigation would be likely to reduce the probability or severity of effects to individuals that would translate to minimization of impacts at the population level under the LPAI standard. Limiting LFA sonar activities in these important areas is expected to limit the likelihood and/or degree of species or stock effects by minimizing the chances that the activity will result in detrimental energetic effects to individuals (such as those that could occur in known feeding areas) or direct interference in breeding or mother/young interactions (such as those that could occur in reproductive or nursing areas) that could result in reductions in reproductive success or survivorship.

Three OBIAs were identified in the 2001 FOEIS/EIS: 200 m isobaths of the east coast of North America; Costa Rica Dome; and Antarctic Convergence Zone. In 2007, the Navy published a supplemental FEIS/FOEIS that designated six new OBIAs in addition to the three OBIAs that were designated in the 2001 FEIS/FOEIS. The criteria for identifying OBIAs in the 2001 and 2007 rules were originally defined in the 2001 SURTASS LFA Sonar FOEIS/EIS (Subchapter 2.3.2.1) as areas of the world's oceans outside of the geographic stand-off distance (greater than 22 km (12 nmi)) from a coastline (including islands) where marine animals of concern (those animals listed under the ESA and/or marine mammals) carry out biologically important activities, including migration, foraging, breeding, and calving.

For the 2012 rule, the Deputy Assistant Secretary of the Navy for Environment (DASN(E)) determined that the purpose of NEPA and E.O. 12114 would be furthered by the preparation of an additional supplemental analysis related to the employment of SURTASS LFA sonar. Accordingly, the DASN(E) directed that an SEIS/SOEIS (among other things) provide further analysis of potential additional OBIAs in regions of the world where the Navy intended to use the SURTASS LFA sonar systems.

In parallel, for the 2012 rule, NMFS, with Navy input, developed a new process and screening criteria for determining an area's eligibility to be considered as an OBIA nominee for marine mammals. Those screening criteria were: (1) Areas with: (a) High

densities of marine mammals; or (b) Known/defined breeding/calving grounds, foraging grounds, migration routes; or (c) Small, distinct populations of marine mammals with limited distributions; and (2) Areas that are outside of the coastal standoff distance and within potential operational areas for SURTASS LFA (*i.e.,* greater than 22 km (13.6 mi; 12 nmi) from any shoreline and not in polar regions).

For the 2012 FSEIS/SOEIS and 2012 rule, NMFS also developed and implemented a robust, systematic screening process for reviewing existing and potential marine protected areas against the OBIA criteria, based on the World Database on Protected Areas (WDPA, 2009), Hoyt (2005), and prior SURTASS LFA sonar OBIAs. This process produced a preliminary list of 403 OBIA nominees. As noted above, and stated in the 2012 Final Rule (77 FR 50290; August 20, 2012), the vast majority of the areas reviewed as potential OBIAs were within 12 nmi from a coastline and therefore already afforded protection due to the coastal standoff zone, indicating the effectiveness of the coastal standoff as one of the primary mitigation measures for reducing potential impacts. The remaining areas were broadly evaluated under the OBIA criteria and, after review, 73 potential OBIAs were considered by the Navy and NMFS.

After the list of potential OBIAs was developed based on information at a broad scale, each of these areas was evaluated at a finer scale to determine whether they qualified for designation as an OBIA. Further analysis of the biological evidence and robustness of the data for each of these recommendations included ranking them in categories using a numbering system ranging from 0 to 4. Any of the nominees that received a ranking of 2 or higher were eligible for continued consideration as an OBIA nominee. A rank score of 2 for designation criteria or for OBIA boundary considerations indicated that the designation was inferred from habitat suitability models (non-peer reviewed), expert opinion, regional expertise, or ''gray literature'' (inferred from analyses conducted for purposes other than quantifying OBIA criteria or boundary; see DoN (2012), Section 4.5.2.1). Thus, even areas with somewhat limited data were eligible for further consideration as an OBIA.

The systematic process described here was developed in order to support an orderly and manageable expert review and to ensure some definable information quality in the identification of OBIAs. As a result of this process, 45 areas ranked a 2 or higher.

Although not part of the initial screening criteria for the 2012 rulemaking, consideration of marine mammal hearing frequency sensitivity led NMFS to screen out areas that qualified solely on the basis of their importance for mid- or high-frequency hearing specialists in past rulemaking. This was due to the fact that the LFA sound source is below the range of best hearing sensitivity for MF and HF odontocete hearing specialists. Using the example of harbor porpoises, this means that a sound with a frequency less than 1 kHz would need to be significantly louder (more than 50 dB louder) than a sound in their area of best sensitivity (around 100 kHz) in order for them to hear it. Additionally, during the 1997 to 1998 SURTASS LFA Sonar Low Frequency Sound Scientific Research Program (LFS SRP), numerous odontocete and pinniped species (*i.e.,* MF and HF hearing specialists) were sighted in the vicinity of the sound exposure tests and showed no immediately obvious responses or changes in sighting rates as a function of source conditions, which likely produced received levels similar to those that produced minor short-term behavioral responses in the baleen whales (*i.e.,* LF hearing specialists). NMFS stated that MF and HF odontocete hearing specialists have such reduced sensitivity to the LFA sonar source that limiting ensonification in OBIAs for those animals would not afford protection beyond that which is already incurred by implementing a shutdown when any marine mammal enters the LFA mitigation zone. Therefore, consideration of marine mammal frequency sensitivity led NMFS to screen out areas that qualified solely on the basis of their importance for MF or HF specialists.

In addition to the considerations above, NMFS reviewed Hoyt (2011), which was an update and revision of Hoyt's 2005 earlier work, along with areas recommended in public comments received on the 2012 DSEIS/SOEIS. As a result of this further analysis, NMFS developed a list of OBIAs, which were then further considered in the context of practicability.

In response to public comments on the 2012 proposed rule, NMFS also reevaluated its preliminary decision not to include areas that met the criteria for sperm whales and pinnipeds, and ultimately determined such areas would be appropriate for OBIA designation where information established the criteria were met, and in fact noted that one OBIA (Patagonia Shelf) had already been identified for elephant seals. While no OBIAs had been identified for sperm whales, NMFS committed to considering sperm whales in future analyses should supporting information become available.

As part of the 2017 DSEIS/SOEIS, and as part of the 2017 rulemaking process, NMFS and Navy continued their evaluation of OBIAs. As a result of that work, NMFS and the Navy revised boundaries and designated seven more OBIAs, for a total of 29 OBIAs that were identified and made part of the NDE, under which the Navy is currently conducting SURTASS LFA sonar activities. Two of these OBIAs include protection for sperm whales (OBIA 28, Perth Canyon and OBIA 29, Southwest Australia Canyons).

Since 2012, the Navy and NMFS have maintained a ''watch list'' of potential marine areas for which information or data have not been sufficient to designate as OBIAs, and reviewed new literature to determine if additional areas should be added to the list of potential areas. The watch list is periodically evaluated or re-assessed as additional information and data are available to determine if new information provides adequate support under one of the OBIA biological criteria. NMFS refers the reader to the SURTASS 2018 DSEIS/SOEIS, Chapter 5 and Appendix C for more detail on the analysis of potential OBIAs. As part of the ongoing Adaptive Management component of the 2012 final rule, and in preparation for the 2018 DSEIS/SOEIS, NMFS and Navy reviewed the watch list and other new information to determine the potential for additional OBIAs or expansion of existing OBIAs within the SURTASS LFA sonar study area.

Offshore Biologically Important Areas—Proposal for Current Rulemaking

For the SURTASS 2018 DSEIS and this proposed rule, the following biological, geographic, and LF hearing sensitivity factors are considered in the identification of OBIAs:

Biological Criteria—As with other biological criteria, critical habitat is considered as one of the possible factors in the OBIA process, but designation as critical habitat does not necessarily comport with designation as an OBIA due to differences in the intent of these designations. Critical habitat is defined and used in the ESA and includes specific geographic areas that contain features essential to the conservation of an endangered or threatened species, including areas that are not currently occupied by the relevant species. However, as stated above, the intent of OBIA designation is to expand upon the coastal standoff, and provide protection from potential SURTASS LFA sonar

impacts by avoiding or minimizing impacts in areas beyond the coastal standoff distance where marine mammals are known to engage in specific behaviors that may lead to more severe impacts if interrupted; known to congregate in higher densities; and/or known to have a limited range and small abundance that creates more vulnerability for the stock as a whole. Therefore, at least one of the following biological criteria must be met for a marine area to be considered as a marine mammal OBIA for SURTASS LFA sonar. When direct data relevant to one of the following are limited, other available data and information may be used if those data and information, either alone or in combination with limited direct data, are sufficient to establish that at least one of the biological criteria are present:

• *Known Breeding/Calving or Foraging Ground, or Mitigation Route*—an area representing a location of known biologically important activities including defined breeding or calving areas, foraging grounds, or migration routes. Potential designation under this criterion is indicative that these areas are concentrated areas for at least one biologically important activity. ''Concentrated'' means that more of the animals are engaged in the particular behavior at the location (and perhaps time) than are typically engaged in that behavior elsewhere.

• *Small, Distinct Populations of Marine Mammals with Limited Distributions*—geographic areas in which small, distinct populations of marine mammals occur and whose distributional range are limited.

• *High Densities*—an area of high density for one or more species of marine mammal. High density areas are those marine waters where the density within a definable area (and potentially time), measurably and meaningfully exceeds the average density of the species or stock within the region. The exact basis for the identification of high density areas may differ across species/stocks and regions/scales, depending on the available information and should be evaluated on a stock-by-stock basis, although combining species or stocks may be appropriate in some situations. The best source for this type of determination is publically-available, direct measurements from survey data.

Geographic Criteria—For a marine area to be eligible for consideration as an OBIA for marine mammals, the area must be located where training and testing activities of SURTASS LFA sonar would occur and cannot be located within 12 nm (22 km) of any emergent land including islands or island systems (must be outside of the coastal standoff zone, which already receives the same protection as OBIAs).

LF Hearing Sensitivity—SURTASS LFA sonar transmissions are well below the range of best hearing sensitivity for most odontocetes and most pinnipeds based on the measured hearing thresholds (Au and Hastings, 2008; Houser *et al.,* 2008; Kastelein *et al.,* 2009; Mulsow and Reichmuth, 2010; Nedwell *et al.,* 2004; Richardson *et al.,* 1995; Southall *et al.,* 2007). The intent of OBIAs is to protect those marine mammal species, such as baleen whales, most likely to hear and be affected by LFA sonar transmissions and to provide them additional protections during periods when they are conducting biologically significant activities. Thus, the primary focus of the OBIA mitigation measure is on LF hearing specialist species. However, OBIAs have been designated to provide additional mitigation protection for non-LF hearing specialists, such as elephant seals and sperm whales, since the available hearing data for these species indicate an increased sensitivity to LF sound (compared to most odontocetes and pinnipeds).

The biological criteria considered in the identification of OBIAs have changed since the 2001 FOEIS/EIS (and as continued in the 2007 SEIS) in two respects. First, under the 2001 FOEIS/EIS, 2007 SEIS, and the 2007 Final Rule, an area could be designated as an OBIA only if it met a conjunctive test of being an area where: Marine mammals congregate (1) in high densities, and (2) for a biologically important purpose. The current scheme is more protective because any one of the biological criteria alone could be a sufficient basis for designation as an OBIA if it also meets the geographic criterion of falling outside of 12 nmi (22 km) from any coastline. Second, the current biological criteria include ''small, distinct populations with limited distribution'' that also could, standing alone, be a basis for designation.

The 2017 NDE for SURTASS LFA sonar lists the 29 marine mammal OBIAs and their effective periods as geographic mitigation with which the Navy must comply for SURTASS LFA sonar activities. These OBIAs resulted from analyses conducted as part of the 2017 SEIS/SOEIS and application for rulemaking, and retained existing OBIAs; revised/expanded existing OBIAs; and added new OBIAs to those defined as part of the 2012 SURTASS LFA sonar rule (also see the SURTASS 2018 DSEIS/SOEIS, 5.3.6.2 and Appendix C for more detail on OBIAs). Of these 29 OBIAs, four are located within the current SURTASS LFA sonar study area (OBIA 16, Penguin Bank, Hawaiian Islands Humpback Whale NMS; OBIA 20, Northern Bay of Bengal and Head of Swatch-of-No-Ground; OBIA 26, Offshore Sri Lanka; and OBIA 27, Camden Sound/Kimberly Region), as indicated in Table 19, below.

Since the 2017 SEIS/SOEIS and NDE for SURTASS LFA sonar, analysis and assessment of marine areas as potential OBIAs has continued. For this proposed rule, we have applied the OBIA biological, geographic, and hearing sensitivity factors, as well as the practicability criterion, and are considering only areas within the study area (central and western North Pacific and eastern Indian Oceans). This analysis includes review of the OBIA watchlist as well as a review of Important Marine Mammal Areas (IMMAs), Ecologically or Biologically Significant Marine Areas (EBSAs), and the International Union for Conservation of Nature (IUCN) Green List of Protected and Conserved Areas that are located within the study area. More information about IMMAs, EBSAs, and IUCN Green List of Protected and Conservation Areas is provided below followed by a discussion of the review of these areas for consideration as OBIAs, which is ongoing and will be completed for the final rule. In Table 19 we list the OBIAs that were previously identified and are currently proposed for inclusion in this rule (*i.e.,* that fall within the identified area covered by the rule (central and western North Pacific and eastern Indian Oceans)).

TABLE 19—MARINE MAMMAL OBIAS CURRENTLY OBSERVED FOR SURTASS LFA SONAR

OBIA No.	Name of OBIA	Location/water body	Relevant low-frequency marine mammal species	Effectiveness seasonal period
16	Penguin Bank, Hawaiian Islands Humpback Whale NMS.	North-Central Pacific Ocean	Humpback whale	November through April, annually.

TABLE 19—MARINE MAMMAL OBIAS CURRENTLY OBSERVED FOR SURTASS LFA SONAR—Continued

OBIA No.	Name of OBIA	Location/water body	Relevant low-frequency marine mammal species	Effectiveness seasonal period
20	Northern Bay of Bengal and Head of Swatch-of-No-Ground (SoNG).	Bay of Bengal/Northern Indian Ocean.	Bryde's whale	Year-round.
26	Offshore Sri Lanka	North-Central Indian Ocean	Blue whale	December through April, annually.
27	Camden Sound/Kimberly Region.	Southeast Indian Ocean; northwestern Australia.	Humpback whale	June through September, annually.

IMMAs are defined by the Marine Mammal Protected Areas Task Force (MMPATF), which is comprised of partners from the International Union for Conservation of Nature (IUCN) World Commission on Protected Areas (WCPA); IUCN Species Survival Commission (SSC); International Committee on Marine Mammal Protected Areas (ICMMPA); Tethys Research Institute; Whale and Dolphin Conservation (WDC); Global Ocean Biodiversity Initiative (GOBI), and Water Evolution organizations. These areas are defined as discrete portions of habitat that are important to one or more marine mammal species; represent priority sites for marine mammal conservation worldwide without management implications; and merit protection and monitoring. IMMA selection criteria are designed to capture aspects of the biology, ecology, and population structure of marine mammals and a candidate IMMA need only satisfy one of the following criteria and/or sub-criteria to successfully qualify for IMMA status: Criterion A—Species or Population Vulnerability; Criterion B—Distribution and Abundance; Criterion C—Key Life Activities; or Criterion D—Special Attributes. To date, IMMAs have been identified and made publicly available only for the western and central Pacific Ocean and Mediterranean Sea (MMPATF, 2018), six of which are in the North Pacific.

EBSAs are an effort of the Convention on Biological Diversity (Convention), which was initiated by the United Nations Environment Programme (UNEP). The Convention is an international legal instrument for the conservation and sustainable use of biological diversity. EBSAs are defined as special marine areas that serve important purposes that ultimately support the healthy functioning of oceans and thus should have increased protection and sustainable management. Currently there are 278 EBSAs defined worldwide, 129 of which are within the central or western North Pacific or eastern Indian Oceans.

The IUCN Green List of Protected and Conserved Areas has been generated as part of an IUCN program that aims to encourage, achieve, and promote effective, equitable, and successful protected areas with a principal goal of increasing the number of protected and conserved areas that are effectively and equitably managed and deliver conservation outcomes. The basis of the IUCN Green List Programme is the Green List Standard, which is a set of components, criteria, and indicators for successful protected area conservation and international benchmarks for quality to provide improved performance and achievement of conservation objectives (IUCN, 2018). The Programme has recognized 25 protected and conserved areas in eight countries around the world, 11 of which are within the SURTASS LFA sonar study area.

NMFS assessed these areas (IMMAs, EBSAs, and IUCN areas) to determine whether they contained characteristics that matched the criteria necessary for identifying an OBIA. The initial assessment for each marine area was a geospatial analysis to determine if the marine area was located within the study area and outside of the coastal standoff range for SURTASS LFA sonar (*i.e.,* >12 nmi (22 km) from any emergent land). Another key step in the assessment of marine areas for designation as OBIAs is determining the area's relevance specific to marine mammals under NMFS' jurisdiction, as many of the EBSAs and other marine areas are defined for their importance to other marine taxa (fish, invertebrates, etc.), or for their importance for general marine conservation. For example, of the six IMMAs designated in the North Pacific Ocean, three were located in the SURTASS LFA sonar study area but only two were located offshore of the coastal standoff range and were carried forward for consideration as OBIAs; review of the 278 identified EBSAs revealed only 12 EBSAs that were within the SURTASS LFA sonar study area outside of the coastal standoff range, and were of noted importance to marine mammal species for which NMFS has jurisdiction (and one additional EBSA was added for consideration due to other factors, as discussed below); and review of the 25 recognized IUCN Green List of Protected and Conserved Areas identified 11 areas within the SURTASS LFA sonar study area, though none of these encompassed any marine waters, so none of these areas were considered further. A summary of the areas assessed is presented in Table 20, below.

TABLE 20—NUMBER AND TYPES OF MARINE AREAS ASSESSED AS POTENTIAL OBIAS

Name/region	Number of areas relevant to marine mammals	Number of areas located within SURTASS LFA sonar study area	Number of areas located outside of coastal standoff range	Number of areas for further consideration
OBIA Watchlist Areas				
—Pacific Remote Islands MNM				
—Marianas Trench MNM				
—Papahanaumokuakea MNM				

TABLE 20—NUMBER AND TYPES OF MARINE AREAS ASSESSED AS POTENTIAL OBIAS—Continued

Name/region	Number of areas relevant to marine mammals	Number of areas located within SURTASS LFA sonar study area	Number of areas located outside of coastal standoff range	Number of areas for further consideration
TOTAL OBIA Watchlist Areas For Further Consideration = 3 *				
EBSAs				
Northeast Indian Ocean	5	10	9	2
South and Western Indian Ocean	14	5	4	0
East Asian Seas	11	32	13	7
North Pacific Ocean	15	6	6	4
Western South Pacific Ocean	9	2	2	0
TOTALS	54	55	34	13
IMMAs				
Western and Central North Pacific Ocean	6	3	2	2
IUCN Green List of Protected and Conserved Areas				
Asian Pacific	0	0	0	0

* Four watchlist areas were advanced for further consideration as OBIAs, but for three of these areas (the MNMs), only a portion of the area met the all of the geographic criteria for consideration.

Review of OBIA Watchlist Marine Areas as OBIAs—As noted above, NMFS and the Navy have maintained a watchlist of potential marine areas that have already been identified and reviewed as potential OBIAs, but for which documentation on the importance of the area to marine mammals has not been established or is lacking in sufficient detail. As the watchlist was developed under previous rules that considered worldwide SURTASS LFA sonar operations, the areas are dispersed globally. The majority of these watchlist areas are not located in the current SURTASS LFA sonar study area (central or western North Pacific and eastern Indian Oceans). Only the watchlist areas within the current SURTASS LFA sonar study area have been re-evaluated for consideration as OBIAs including: The Pacific Remote Islands (PRI) Marine National Monument (MNM); Marianas Trench MNM; and the Papahanaumokuakea MNM. The British Indian Ocean Territory (BIOT)-Chagos Islands MPA is large, encompassing an area of 158,605 nmi^2 (544,000 km^2) in the central Indian Ocean, the majority of which lies outside the coastal standoff range for SURTASS LFA sonar. However, little information is available on marine mammals that use these remote waters or of what important biological activities of marine mammals may be conducted in these waters. Available literature and information was researched and reviewed, but the Navy and NMFS' conclusion on this area remains the same, that insufficient data are available to demonstrate that the waters of this MPA are important biologically to marine mammals. Accordingly, the Navy and NMFS are retaining the BIOT-Chagos Islands MPA on the OBIA Watchlist and not moving forward for consideration as an OBIA at this time. Not all areas of these MNMs met the geographic criteria. The Marianas Trench MNM consists of three units, but only one unit (The Islands unit) met the geographic criteria. The Islands unit consists of the waters and submerged lands of the three northernmost Mariana Islands, while the other two units consist solely of submerged lands and include no waters. Additionally, only two of the PRI MNM units (Wake and Johnson atolls) were located wholly within the study area, and only a very small strip of part of a third PRI MNM unit (Kingman Reef/Palmyra Atoll) was within the study area. Therefore, only those areas of the MNMs within the study area were further considered.

Review of EBSAs as OBIAs—EBSAs from five geographic regions, as classified by the Convention (*https://www.cbd.int/ebsa/ebsas*), in the Indian and North Pacific Oceans in which all or part of the SURTASS LFA sonar study area is located were assessed as potential OBIAs. The five pertinent EBSA regions include: North-East Indian Ocean, Southern Indian Ocean, East Asian Seas, North Pacific Ocean, and Western South Pacific Ocean. All EBSAs in these regions were assessed to determine their relevance to marine mammal species under NMFS' jurisdiction. Forty-four of the EBSAs were noted of importance to marine mammals. However, only 13 of these met the preliminary relevance and geographic criteria for OBIAs and were carried forward for further review for consideration as OBIAs. Although the Ogasawara Island EBSA (included in the 13 carried forward for further review) was located entirely within the coastal standoff range, waters beyond the coastal standoff for this area are being further considered to see if an area can be defined in which important reproductive behaviors occurs and sufficient data supports its designation as an OBIA due to the fact that the Ogasawara area is an important reproductive area for the western North Pacific DPS and stock of humpback whale.

Review of IMMAs as OBIAs—Three identified IMMAs are located within the SURTASS LFA sonar study area, including: Northwest Hawaiian Islands; Main Hawaiian Islands; and the Southern Shelf Waters and Slope Edge of Palau IMMAs. However, the geographic extent of the Palau IMMA is located entirely within the coastal standoff range; therefore, two of these three IMMAs were carried forward for consideration as OBIAs.

Review of IUCN Green List of Protected and Conserved Areas as OBIAs—While these areas have been designated in four global geographic regions, only the Asia Pacific region is

located within or near the SURTASS LFA sonar study area. Although 11 areas are located in the Asian Pacific region, only one (Montague Island Nature Reserve) is located in the marine environment. However, this area is located entirely on the Island with no adjacent waters conserved. Therefore, none of these areas have importance to marine mammals such that consideration as OBIAs is warranted.

In addition to evaluation of OBIA watch list areas, EBSAs, IMMAs, IUCN Green List of Protected and Conserved Areas (discussed above), and Critical Habitat areas (discussed below), NMFS and the Navy evaluated areas that were suggested as OBIAs in a public comment received on the SURTASS DSEIS/SOEIS. The NRDC's comment on the SURTASS DSEIS/SOEIS recommended 19 areas for consideration as OBIAs. However, six of these areas were already included in the areas under consideration in the SURTASS DSEIS/SOEIS. Additionally, eight of the areas suggested by NRDC did not meet the geographic criteria (*i.e.,* were either located within the coastal standoff or not within the study area), or did not align with OBIA eligibility criteria (area important for marine mammals not under NMFS' jurisdiction (dugong), or suggested area for a DPS not anticipated to occur in the study area (Arabian Sea DPS of humpback whale)). The remaining five areas suggested by NRDC received further consideration for potential as OBIAs. Therefore, 25 areas comprised of 13 EBSAs; 2 IMMAs; 3 OBIA watch list areas; 2 critical habitat areas; and 5 NRDC DSEIS/SOEIS recommendation areas were further considered for potential OBIA designation.

A list of the 25 areas considered for potential designation as new OBIAs for this rulemaking, as described above, is presented in Table 21 below. Further, NMFS and the Navy have identified the subset of these areas that, based on additional preliminary analysis, satisfy at least one of the biological criteria and met the geographic criteria. The 25 areas that were further considered, and the existing information that supports our additional preliminary analysis, are summarized in a document entitled Potential Marine Mammal OBIAs for SURTASS LFA Sonar; Marine Areas Under Consideration, which is incorporated by reference into this proposed rule, and has been posted on NMFS' website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0,* as well as the Navy's SURTASS LFA Sonar website at *http://www.surtass-lfa-eis.com.*

TABLE 21—MARINE AREAS FOR FURTHER CONSIDERATION AS MARINE MAMMAL OFFSHORE BIOLOGICALLY IMPORTANT AREAS (OBIAS) FOR SURTASS LFA SONAR

Area #	Name of marine area	Ocean basin	Marine mammal species of concern	Geographic criteria	Biological criteria	Type of marine area	Preliminarily meeting geographic, LF-sensitivity, and biological criteria
1	Papahānaumokuākea Marine National Monument.	Central North Pacific Ocean.	Humpback whale; Hawaiian monk seal.	Majority of area outside coastal standoff range (CSR).	Breeding/calving	Marine National Monument; ESA Designated Critical Habitat for the Hawaiian monk seal also is located in these waters (OBIA Watchlist).	Yes.
2	Marianas Trench Marine National Monument.	Western North Pacific Ocean.	Humpback, Bryde's, sei, common minke, and sperm whales.	38 nmi outside CSR surrounding each of three islands.	Breeding/calving, migration.	Marine National Monument (OBIA Watchlist).	Yes.
3	Trincomalee Canyon and Associated Ecosystems.	Northeast Indian Ocean.	Sperm and blue (pygmy) whales.	Part of area outside CSR.	Foraging, migration	EBSA	Yes.
4	Southern Coastal/Offshore Waters between Galle and Yala National Park.	Northeast Indian Ocean.	Blue (pygmy) whale.	Part of area outside CSR; OBIA #26 overlaps with part of area outside CSR.	Foraging, breeding/calving, migration.	EBSA	Yes.
5	Modification of Bluefin Spawning EBSA.	Western North Pacific Ocean.	Humpback whale	Part of area outside CSR.	Breeding/calving	EBSA	Yes.
6	Convection Zone East of Honshu.	Western North Pacific Ocean.	Gray whale	Outside CSR	Foraging, migration	EBSA	Yes.
7	Ogasawara Islands	Western North Pacific Ocean.	Humpback whale	EBSA inside CSR; examine area surrounding islands > CSR [1].	Breeding/calving	EBSA	Yes.
8	Upper Gulf of Thailand.	Western North Pacific Ocean.	Bryde's whale, dolphins and porpoise.	Part of area outside CSR.	Foraging, Breeding/calving.	EBSA	Yes.
9	Southeast Kamchatka Coastal Waters.	Western North Pacific Ocean.	Gray, killer, humpback, fin, and North Pacific right whales; Steller sea lion.	Small part outside CSR.	Foraging, migration	EBSA	Yes.
10	Northwestern Hawaiian Islands.	Central North Pacific Ocean.	Humpback whale, Hawaiian monk seal; spinner dolphin.	Partially outside of CSR.	Breeding/calving, Small distinct population, critical habitat.	IMMA	Yes.
11	West of Maldives	Central Indian Ocean.	Blue (pygmy), Bryde's whale.	Outside of CSR	Migration, foraging	NRDC DSEIS/SOEIS Recommendation.	Yes.

TABLE 21—MARINE AREAS FOR FURTHER CONSIDERATION AS MARINE MAMMAL OFFSHORE BIOLOGICALLY IMPORTANT AREAS (OBIAS) FOR SURTASS LFA SONAR—Continued

Area #	Name of marine area	Ocean basin	Marine mammal species of concern	Geographic criteria	Biological criteria	Type of marine area	Preliminarily meeting geographic, LF-sensitivity, and biological criteria
12	North Western Australian Shelf.	Southeast Indian Ocean.	Blue (pygmy) whale.	Outside of CSR	Migration	NRDC DSEIS/SOEIS Recommendation.	Yes.
13	Browse Basin (North Western Australia).	Southeast Indian Ocean.	Blue (pygmy) whale.	Outside of CSR	Migration	NRDC DSEIS/SOEIS Recommendation.	Yes.
14	Western Australia (Shark Bay to Exmouth Gulf).	Southeast Indian Ocean.	Humpback whale	Partially outside of CSR.	Migration	NRDC DSEIS/SOEIS Recommendation.	Yes.
15	Pacific Remote Island Marine National Monument (Wake/Johnson/Palmyra atolls and Kingman Reef units only).	Western North Pacific.	Baleen, beaked, and sperm whales; dolphins.	Small part of northern end of Kingman Reef/Palmyra Atoll within LFA Study Area.	Small distinct population.	Marine National Monument (OBIA Watchlist).	No.
16	Hawaiian Monk Seal Critical Habitat.	Central North Pacific.	Hawaiian monk seal.	Within CSR except for Penguin Bank, which is enclosed within OBIA #16 (Penguin Bank).	Breeding/calving, foraging.	ESA Critical Habitat for Hawaiian monk seal.	No.
17	Main Hawaiian Island Insular DPS of False Killer Whale Critical Habitat.	Central North Pacific.	False killer whale	Part of area outside CSR.	High-density where foraging and/or breeding/calving may occur.	ESA Critical Habitat for Main Hawaiian Islands Insular DPS of false killer whale.	No.
18	Kyushu Palau Ridge.	Western North Pacific.	Sperm whale	Outside CSR	Possible foraging	EBSA	No.
19	Raja Ampat and Northern Bird's Head.	Western North Pacific Ocean.	Bryde's, false killer, killer, and sperm whales; dolphins.	Small portion of Bird's Head Seascape occurs within LFA Study Area.	Migration, foraging (Straits outside LFA study area may function in migration).	EBSA	No.
20	North Pacific Transition Zone.	North Pacific Ocean.	Northern elephant seal.	Outside CSR	Foraging	EBSA	No.
21	Peter the Great Bay.	Sea of Japan	Spotted seal	Part of area outside CSR.	Breeding/calving, foraging.	EBSA	No.
22	Moneron Island Shelf.	Sea of Japan	Steller sea lion	Part of area outside CSR.	Breeding/calving	EBSA	No.
23	Kuroshio Current South of Honshu.	Western North Pacific Ocean.	Finless porpoise	Part of area outside CSR.	Breeding/calving	EBSA	No
24	Main Hawaiian Archipelago.	Central North Pacific Ocean.	Hawaiian monk seal, humpback, false killer, Blainville's beaked, Cuvier's beaked, and melon-headed whales.	Part of area outside CSR.	Breeding/calving (humpback whale and Hawaiian monk seal enclosed within OBIA #16, Penguin Bank); small, resident populations.	IMMA	No.
25	Polar/Kuroshio Extension Fronts.	North Pacific Ocean.	Sei whale	Outside CSR	High density, foraging.	NRDC DSEIS/SOEIS Recommendation.	No.

[1] Even though this EBSA boundary is inside the coastal standoff range, since this is such an important reproduction area for the endangered WNP humpback whale, the Navy and NMFS are further evaluating the waters beyond 12 nmi.

NMFS will consider additional information received during the public comment period when further evaluating if these areas satisfy the criteria for OBIA designation. Following the public comment period and consideration of additional information provided, for areas that we conclude satisfy the OBIA criteria, NMFS and the Navy will evaluate the practicability of the measure, which for military readiness activities ''shall include consideration on personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.'' In accordance with the LPAI Standard, NMFS' final rule will include the rationale for which areas satisfied the OBIA criteria, a discussion of practicability, and the list of those designated as OBIAs.

Other Geographic Mitigation Considerations

Above, we describe a comprehensive process and set of criteria for identifying OBIAs, which if used in conjunction with the limits on SURTASS LFA sonar transmission levels in and around them described above, we expect to decrease the likelihood and/or scale of impacts on marine mammal species or stocks. However, the inclusion of this focused and systematic process and criteria for designating OBIAs does not mean that other mitigation, including specific time/area restrictions, could not be considered in the context of the LPAI standard. Below we address some other factors that NMFS and the Navy have

considered in the development of the proposed rule.

Critical Habitat

Under section 7 of the ESA, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its designated critical habitat. Critical habitat is not designated in foreign countries or any other areas outside of U.S. jurisdiction. Critical habitat within the U.S. EEZ implicated by SURTASS LFA sonar activities has been designated for two of the relevant ESA-listed marine mammal species, Hawaiian monk seals and the Main Hawaiian Island (MHI) Insular DPS of false killer whales. Effects to critical habitat are being explicitly addressed through the section 7 consultation process under the ESA. Some of the characteristics of ESA critical habitat are germane to the identification of OBIAs under this rulemaking. However, critical habitat also considers physical as well as biological features and may also consider areas that are currently unoccupied by the species. Therefore, not all critical habitat qualifies as an OBIA, or is otherwise appropriate for time/area restrictions when making determinations under the MMPA. Further, we note that neither of these two ESA-listed species is a low frequency hearing specialist or sensitive to SURTASS LFA in a manner that would otherwise justify designation of a mitigation area on their behalf, given the existing protections of the Navy's three-part detection and shutdown protocols.

Nearly all of the critical habitat for the Hawaiian monk seal lies within the coastal standoff distance for SURTASS LFA sonar. A small area of the monk seal's critical habitat at Penguin Bank extends beyond the 22-km (12-nmi) coastal standoff distance, and is part of the existing Penguin Bank, Hawaiian Islands Humpback Whale NMS (OBIA 16). In addition, per the CZMA consultation with the State of Hawaii for SURTASS LFA sonar, the Navy agreed not to operate SURTASS LFA sonar in state waters (out to 3 nmi) or in waters of Penguin Bank to the 600-ft (183-m) isobath, which is the boundary of the Penguin Bank OBIA for SURTASS LFA sonar. In addition, the Navy also agreed not to ensonify Hawaii state waters at levels above 145 dB. Thus, the critical habitat of the Hawaiian monk seal beyond the coastal standoff range would not be exposed to SURTASS LFA sonar training and testing activities and the small portion of critical habitat that may qualify for consideration as an OBIA is already covered by an existing OBIA. Thus, the entire critical habitat is covered by some form of geographic mitigation.

The critical habitat for the MHI insular false killer whale (MHI IFKW) DPS includes waters from the 148- to 10,499-ft (45-to 3,200-m) depth contours around the MHI from Niihau east to Hawaii. MHI IFKWs are island-associated whales that rely entirely on the productive submerged habitat of the main Hawaiian Islands to support all of their life-history stages, and their range is restricted to the shelf and slope habitat around the MHI, unlike pelagic false killer whales found more in open oceans. Because of the habitat characteristics that are important components to the ecology of these whales, NMFS identified a single feature, (island-associated marine habitat for MHI IFKWs) with four characteristics that support this feature as essential to their conservation. The four characteristics include: (1) Adequate space for movement and use within shelf and slope habitat; (2) prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; (3) waters free of pollutants of a type and amount harmful to MHI IFKWs; and (4) sound levels that will not significantly impair false killer whales' use or occupancy.

Some Navy and other Federal agency areas, such as the Pacific Missile Range Facility offshore ranges, are excluded from the critical habitat designation (NOAA, 2018). In most areas of the waters surrounding the MHI, the coastal standoff range for SURTASS LFA (12 nmi (22 km)) is located closer to shore than the seaward boundary of the critical habitat for the MHI Insular DPS of the false killer whale (*i.e.,* some of the critical habitat is beyond the coastal standoff range). The Penguin Bank OBIA encompasses some of the critical habitat, but a portion of the critical habitat lies beyond, or in deeper waters, than the OBIA. However, as discussed above, part of the CZMA stipulations for SURTASS LFA sonar use in Hawaiian waters required the Navy to agree not to use SURTASS LFA sonar in the waters (out to 3 nmi) or over Penguin Bank to a water depth of 600 ft (183 m) and to limit ensonification within Hawaii state waters to 145 dB.

Regarding prey availability (large pelagic fish and squid) of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth of false killer whales, no mortality of marine invertebrates is reasonably expected to occur from exposure to LFA sonar training and testing activities nor are population level effects likely. Thus, marine invertebrates such as squid would not reasonably be adversely affected by SURTASS LFA sonar training and testing activities such that their availability (or other prey availability) would be diminished (also refer to Chapter 3, section 3.4.2.1 of the SURTASS DSEIS/SOEIS for a discussion of why marine invertebrates are not reasonably likely to be adversely impacted by SURTASS LFA sonar training and testing activities). Marine fishes, however, may be affected by exposure to LFA sonar transmissions, but only if they are located within close proximity (<0.54 nmi (<1 km)) to the transmitting sonar source. The Navy's analysis indicates a minimal to negligible potential for an individual fish to experience non-auditory or auditory effects or a stress response from exposure to SURTASS LFA sonar transmissions. A low potential exists for minor, temporary behavioral responses or masking effects to an individual fish when LFA sonar is transmitting, but no potential is estimated for fitness level consequences to fish stocks. Since it is highly unlikely that a significant percentage of any prey stock would be in sufficient proximity during LFA sonar transmissions to experience such effects, there is minimal potential for LFA sonar to affect prey fish stocks. Thus, no adverse effects are reasonably expected on the quantity, quality, and availability of prey fishes as the result of exposure to SURTASS LFA sonar training and testing activities. Accordingly, SURTASS LFA sonar training and testing activities would not significantly impact the biological characteristic of prey availability of the MHI Insular DPS of the false killer whale's designated critical habitat.

Regarding the underwater sound produced by SURTASS LFA sonar, it would not be expected to ''significantly impair false killer whale's use or occupancy'' due both to the small scale of the activity (small number of vessels operating across two ocean basins, meaning that any individual marine mammal would be expected to be exposed for only a short amount of time) and the frequency of the SURTASS signal, which is not in the range of higher sensitivity for this species and would not be expected to interfere with their communication. Further, required shutdowns are expected to minimize false killer whale exposure to high sound levels and the Navy's implementation of a coastal standoff

zone means that SURTASS LFA training and testing is not occurring across much of the critical habitat. No aspect of SURTASS LFA sonar training and testing activities would reasonably be expected to impact the spatial use of false killer whales. As a result, the use of SURTASS LFA sonar for training and testing activities in Hawaiian waters would not reasonably be expected to have any impact on the physical characteristics of the false killer whale critical habitat since neither the spatial availability nor sound levels in the continental shelf and slope habitat would be significantly impacted. Accordingly, NMFS is not recommending additional geographic mitigation in this area.

Both the Navy and NMFS Protected Resources Permits and Conservation Division are consulting with NMFS Protected Resources Interagency Cooperation Division on effects on critical habitat pursuant to section 7 of the ESA. Consultations under previous rules and LOAs have resulted in determinations that neither NMFS' nor the Navy's actions are likely to jeopardize the continued existence of any ESA-listed species or destroy or adversely modify designated critical habitat.

Expanded Coastal Standoff Zone

As proposed, the Navy will restrict training and testing activities utilizing SURTASS LFA sonar within 22 km (14 mi; 12 nmi) of any coastline, including islands, such that the SURTASS LFA sonar-generated sound field will not exceed 180 dB re: 1 μPa (RL) at that seaward distance. This measure is intended to minimize both the severity and scale of effects to marine mammals and, by extension, marine mammal species and stocks, by avoiding areas where many biologically important behaviors and higher densities of many species that may be found in coastal areas occur. In the past, some commenters have recommended the Navy implement a larger coastal standoff zone than is currently proposed in this rule. We reiterate that our analysis shows that approximately 80 percent of known and potential marine protected areas are within the 22 km (12 nmi) coastal standoff zone, an indication of this measure's effectiveness, and it is practicable. Additionally, this restriction limits exposures of marine mammals to high-level sounds in the vicinity of geographical features that have been associated with some stranding events (*i.e.,* enclosed bays, narrow channels, etc.) attributed to activities other than SURTASS LFA sonar.

The Navy's 2007 SEIS/SOEIS evaluated increasing the coastal standoff distance up to 46 km (25 nmi) and, based on a six-step analysis process, determined that increasing the coastal standoff range would decrease exposure to higher received levels for concentrations of marine animals closest to shore, but would do so at the expense of increasing exposure levels for shelf break and pelagic species. There have been no changes to the best available information or other indications that the coastal standoff distance should be increased, so there is no change in this mitigation measure from previous rulemakings. In addition, any areas beyond the 12 nmi coastal standoff that are biologically significant are considered as part of the OBIA process.

Commercial and Recreational SCUBA Diving Mitigation Zone

The Navy will establish a mitigation zone for human divers at 145 dB re: 1 μPa at 1 m around all known human commercial and recreational diving sites. Although this geographic restriction is intended to protect human divers, it will also reduce the LFA sound levels received by marine mammals located in the vicinity of known dive sites.

White Paper on ''Identifying Areas of Biological Importance to Cetaceans in Data-Poor Regions''

As described earlier, for the 2012 rulemaking, NMFS convened a panel of subject matter experts (SMEs) to help identify marine mammal OBIAs relevant to the Navy's use of SURTASS LFA sonar. Separately, we consulted a NMFS scientist, who was also on that same SME panel, to help address a recommendation in a public comment that NMFS consider a global habitat model (Kaschner *et al.,* 2006) in the development of OBIAs. In addition to providing the requested input (which essentially concluded that using the Kaschner model was not advisable, for several reasons), the NMFS scientist, in conjunction with other NMFS scientists, went further and provided some guidance for alternate methods for considering ''data poor areas'' and drafted a paper entitled ''Identifying Areas of Biological Importance to Cetaceans in Data-Poor Regions'' (referred to in this notice as the ''White Paper''). NMFS' consideration of the White Paper was discussed in the 9th Circuit's ruling on our 2012 Final Rule, and as a consequence we provide here some additional details and background regarding our consideration of the White Paper recommendations for this proposed rulemaking.

Kaschner et al. (2006) Recommendation

As requested, the White Paper authors reviewed the Kaschner *et al.* (2006) paper in the context of potential mitigation for SURTASS LFA sonar. The Kaschner *et al.* (2006) paper used models based on a synthesis of ''existing and often general qualitative observations about the spatial and temporal relationships between basic environmental conditions and a given species' presence'' to ''develop a generic quantitative approach to predict the average annual geographic ranges'' of marine mammal species on a global scale. Several environmental correlates including depth, sea surface temperature, distance to land, and mean annual distance to ice edge were used in the Kaschner effort. After evaluating four case studies from the Kaschner *et al.* (2006) study for predicting gray whale, northern right whale dolphin, North Atlantic right whale, and narwhal distribution, the authors of the White Paper concluded that ''(t)he predictions from the four case studies . . . included errors of omission (exclusion of areas of known habitat) and commission (inclusion of areas that are not known to be habitat) that could have important implications if the model predictions alone were used for decision making in a conservation or management context.''

Specifically, the White Paper illustrated that the Kaschner *et al.* effort omitted a considerable portion of known gray whale habitat; overestimated the range of suitable habitat for northern right whale dolphins off the U.S. West Coast (noting that species-specific models based on dedicated shipboard surveys more correctly identified suitable habitat); predicted habitat for North Atlantic right whales in large areas where they have never been recorded; and predicted suitable habitat for narwhal that did not correspond with their known distribution. Noting that these significant inaccuracies in the model could result in either under-protection or over-restrictiveness, the authors of the White Paper did not recommend basing the identification of biologically important areas on this modeling. NMFS concurred with this recommendation and elected not to use the Kaschner paper, or other similar predictive envelope models as a basis for identifying additional protective areas in the 2012 SURTASS LFA sonar incidental take rule.

Clarification of Concepts Raised in White Paper

In *NRDC* v. *Pritzker,* referring to the White Paper and its specific recommendations that NMFS did not adopt for identification of OBIAs, the 9th Circuit stated that NMFS, in its 2012 rule, ''did not give adequate protection to areas of the world's oceans flagged by its own experts as biologically important, based on the present lack of data sufficient to meet the Fisheries Service's (OBIA) designation criteria, even though NMFS' own experts acknowledged that (f)or much of the world's oceans, data on cetacean distribution or density do not exist.'' *NRDC* v. *Pritzker,* 828 F.3d at 1142. Although the White Paper authors utilized the term ''biological importance'' in the title of the paper, they clearly stated that ''it must be decided whether the list of OBIAs should be comprehensive (based on a 'precautionary approach') or pure (based on the 'minimalist approach'),'' and explicitly declined to provide an answer to this question. Specifically, they indicated ''it must be decided whether to be precautionary and possibly nominate areas that are of marginal importance in an attempt to minimize the chances of overlooking biologically important areas'' or ''minimize the chances of nominating sites that are of marginal biological importance and, therefore, risk overlooking biologically important areas.'' Then, the authors suggested three general recommendations for decision making based upon a precautionary approach if that is the method selected by the decision maker, as discussed further below.

However, the recommendations of the White Paper present a dichotomous ''precautionary versus non-precautionary'' choice, an interpretation that fails to consider the context of the requirements of the MMPA, the nature of the anticipated effects of the action at issue, and the other mitigation measures. More appropriately, NMFS has fully and independently considered each of the White Paper's three recommendedations in the context of the MMPA's LPAI standard, as described below. In that analysis, we first note the small scale of the anticipated effects of the Navy's request for authorization (496–592 hours/year of SURTASS LFA sonar spread across two ocean basins) and the low magnitude and severity of impacts expected to any individual marine mammals (relatively short-term exposures given the spatial scale of the vessels' movement), even in the absence of mitigation, given the nature of the activities. Then we note the robust shutdown measures that utilize the highly effective visual, passive acoustic, and active acoustic detection methods that are in place for all areas and times to avoid marine mammal injury as well as minimize TTS and more severe behavioral responses, belying claims that we treat data-poor areas as though they are equivalent to zero-density areas or areas of no biological importance. Next, we discuss the coastal standoff zone, which minimizes take of many species with coastal habitat preferences. We then examine the activity restrictions in OBIAs, which further limit potentially more significant impacts in areas that are known to be biologically important to the species that are more susceptible to the SURTASS LFA sonar signal. Finally, we discuss the limited and uncertain additional protective value that the White Paper recommendations would be expected to provide for marine mammal individuals, much less species or stocks. After considering all of this information, in addition to the information provided by the Navy indicating that further restricting SURTASS LFA sonar training and testing in the areas recommended in the White Paper would be impracticable, NMFS determined that the use of the White Paper recommendations was not appropriate.

White Paper Specific Recommendations

While the White Paper authors essentially disqualified the specific extrapolative predictive results of the Kaschner model based on ground-truthing them against known data, they nevertheless recommended broader protections based on fewer environmental variables, to be used if NMFS determined that a ''precautionary approach'' was appropriate. Although the current White Paper recommendations are grounded in some sound broad ecological principles, the ''precautionary approach'' considered by the White Paper authors potentially suffers from some of the same types of weaknesses as the Kaschner model or other ''environmental envelope'' precautionary approaches. In the 2012 SURTASS LFA sonar rule, NMFS evaluated the White Paper solely through the lens of the OBIA process, and determined that the recommendations presented were not appropriate for identification of OBIAs, which may have limited fuller consideration of the recommendation. For this rulemaking, NMFS independently examined the White Paper's specific recommendations in the context of the LPAI standard to determine whether following those recommendations is warranted to minimize the impacts from SURTASS LFA sonar training and testing activities on the affected marine mammal species or stocks. This consideration was done outside of the OBIA designation process, and is consistent with the consideration of criteria described above when determining appropriateness of mitigation measures. The White Paper recommended the following general guidelines based on ecological principles to identify areas of biological importance for cetaceans:

(1) Designation of all continental shelf waters and waters 100 km seaward of the continental slope as biologically important habitat for marine mammals;

(2) Establishment of OBIAs within 100 km of all islands and seamounts that rise within 500 m of the surface; and

(3) Nomination of high productivity regions that are not included in the continental shelf, continental slope, seamount, and island ecosystems above as biologically important areas.

These recommendations are evaluated below in the context of the proposed SURTASS LFA sonar training and testing activities and the mitigation measures that have been and are proposed to be implemented to minimize the impacts on the affected marine mammal species or stocks from these activities.

To reiterate, NMFS has required several mitigation measures for SURTASS LFA training and testing sonar activities that: (1) Minimize or alleviate the likelihood of injury (PTS), TTS, and more severe behavioral responses (the 2,000-yard LFA mitigation/buffer zone)); (2) additionally minimize or avoid behavioral impacts in known important areas (which includes important habitat) that would have a higher potential to have negative energetic effects or deleterious effects on reproduction that could reduce the likelihood of survival or reproductive success (OBIAs); and (3) generally lessen the total number of takes of many species with coastal or shelf habitat preferences (coastal standoff). The nature and context of how LFA sonar is used in training and testing activities (small number of vessels operating in open ocean areas and typically using active sonar only sporadically) is such that impacts to any individual are expected to be limited primarily because of the short duration of exposure to any individual mammal. In addition, as explained above, an animal would need to be fairly close to the source for the entire length of a transmission (60 seconds) to experience

injury, and exposures occur in open water areas where animals can more readily avoid the source and find alternate habitat relatively easily. In addition, highly effective mitigation measures would be implemented that further ensure impacts are limited to lower-level responses with limited potential to significantly alter natural behavior patterns in ways that would affect the fitness of individuals and by extension the affected species or stocks.

SURTASS LFA sonar operates at 100 to 500 Hz. This frequency is far below the best hearing sensitivity for MF and HF species. HF species have their best hearing between around 60 and 125 kHz, which means that a sound at 500 Hz (and below) has to be at least 50 dB louder for HF species to hear it as well as a sound in their best hearing range. MF cetaceans have their best hearing between around 40 and 80 kHz, which means that at 500 Hz and below, the sound has to be 40 dB louder, or more, for this group to hear the sound as well as a sound in their best hearing range. In other words, these species have to be much closer to a sound at the frequency of SURTASS LFA sonar to hear it, which means that generally they have to be much closer to the SURTASS sonar source for it to cause PTS, TTS, or a behavioral response. Additionally, during the 1997 to 1998 SURTASS LFA Sonar Low Frequency Sound Scientific Research Program (LFS SRP), numerous odontocete species (*i.e.,* MF and HF hearing specialists) and pinniped species were sighted in the vicinity of the sound exposure tests and showed no immediately obvious responses or changes in sighting rates as a function of source conditions, which likely produced received levels similar to those that produced minor short-term behavioral responses in the baleen whales (*i.e.,* LF hearing specialists).

As described in the 2012 rule, NMFS believes that MF and HF odontocete hearing specialists have such reduced sensitivity to the LFA sonar source that limiting ensonification in OBIAs for those animals would not afford meaningful protection beyond that which is already incurred by implementing a shutdown when any marine mammal enters the 2,000-yard LFA mitigation/buffer zone. For the same reason, our discussion of the White Paper recommendations will be limited to lower frequency sensitive species, although it is worth noting that the existing 22 km (14 mi; 12 nmi) coastal standoff ensures a reduced number of potential takes of many MF and HF species with coastal habitat preferences. Moreover, the White Paper's recommendations for mitigation in data-poor areas were made solely for cetaceans.

As noted previously, in evaluating mitigation for species or stocks and their habitat, we consider the expected benefits of the mitigation measures for the species or stocks and their habitats against the practicability of implementation. This consideration includes assessing the manner in which, and the degree to which, the implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks (including through consideration of expected reduced impacts on individuals), their habitat, and their availability for subsistence uses (where relevant). This analysis will consider such things as the nature of the proposed activity's adverse impact (likelihood, scope, range); the likelihood that the measure will be effective if implemented; the likelihood of successful implementation. Practicability of implementing the measure is also assessed and may involve consideration of 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 (16 U.S.C. 1371(a)(5)(A)(ii)).

Taking into account the above considerations, NMFS' evaluation of the recommendations of the White Paper is described below:

Continental Shelf Waters and Waters 100 km Seaward of Continental Slope

Consideration of potential for reduction of adverse impacts to marine mammal species and stocks and their habitat—The Navy already implements a coastal standoff zone of 22 km (14 mi; 12 nmi), which includes large parts of the continental shelf around the world, includes parts of the slope in some areas, and reduces potential takes of many marine mammal species and stocks with coastal habitat preferences. In addition, under this SEIS/OEIS, the Navy is not able to deploy and utilize SURTASS LFA sonar for training and testing within any foreign nations territorial seas, which encompasses an area up to 12 nmi (depending on the distance each nation claims). The White Paper provided little basis for the 100 km buffer seaward of the continental slope and we have found no specific literature to support such a broad buffer in all areas. Therefore, in the context of this evaluation, NMFS first considered if there was evidence of the importance of the continental slope itself, without any consideration for a buffer.

In support of understanding the additional value of expanding this standoff to 100 km beyond the continental slope margin, NMFS assessed known marine mammal density information for lower frequency hearing specialists from the U.S. East (Roberts *et al.,* 2016) and West coasts and compared these densities to bathymetry, specifically looking at areas of high densities compared to the continental shelf and slopes on both coasts (NOAA, 2009). This assessment and comparison focused on the U.S. East and West coasts as an example because relatively more data is available for these waters. The comparison showed that mapped areas of highest densities are not always related to the slope or shelf. For example, while fin whales in the eastern U.S. waters show relatively higher densities on the continental shelf and slope, relatively higher densities of fin whales in western U.S. waters are much farther out to sea from the continental shelf or slope (well beyond 100 km of the slope), and the same was found for sperm whales. Some mysticetes do show higher densities on the continental shelf, and some have higher densities along the continental slope, which may also vary among seasons (*e.g.,* fin whales on the east coast). Generally, density information from the Atlantic showed some enhanced densities along the slope, but only for certain species in certain seasons, and did not indicate universally high densities along the slope. There are many factors that influence the spatial and temporal distribution and abundance of cetaceans, including environmental variables such as physiochemical, climatological, and geomorphological variables operating on times scales ranging from less than a day to millennia; biotic variables, such as prey distribution, competition among other species, reproduction, and predation; and anthropogenic factors, such as historical hunting, pollution, ship activity, etc. (Davis *et al.,* 1998). Humpback whales (especially around Cape Hatteras) seem to show some higher densities around the slope, but also seaward of the slope, especially in winters. However, the slope is closer to the shore around Cape Hatteras than most places along the eastern seaboard, and while humpbacks may show higher densities along the slope in this area, the same cannot be said of humpbacks further south (*i.e.,* in Florida) where the slope is much further offshore. Right whales show higher densities closer to shore along the Atlantic coast, while sperm whales are farther out past the slope on the Atlantic coast, as they are deep divers. Density data from the

Pacific coast show higher densities of blue whales on the shelf and slope, while fin whales and sperm whales are observed in waters beyond the continental slope. Gray whales show higher densities closer to shore along the Pacific coast, while humpbacks seem to be along the slope and beyond in some places. Using the continental United States densities of these lower frequency sensitive species as examples showed that densities are sometimes higher within 100 km of the slope, but are often higher elsewhere (off the slope) and many of these high density areas are highly seasonal.

As stated above, NMFS looked at these areas because relatively more data are available and, since comparisons in these areas do not consistently show strong correlation of high densities with the continental slope, it is reasonable to infer the same inconsistent relationship for other slope/shelf areas where there are even fewer data. As discussed below, there is no scientific basis for NMFS to conclude that geographical restrictions for these data-poor areas would reduce adverse impacts to marine mammal species or stocks or their habitat. Therefore, restricting SURTASS LFA sonar training and testing activities within 100 km of the entire continental shelf and slope is of questionable value as a mitigation measure to avoid areas of higher densities of marine mammal species or stocks, and further, would restrict these activities in large areas of the open ocean that we know don't harbor high densities of marine mammals (especially when the 100-km buffer is considered).

We said in the OBIA context that although we are identifying ''known'' biologically important areas, other biologically important areas have yet to be identified, due to limited data. However, it is important to realize that much more research is conducted close to shore, in the United States and internationally, and typically areas within 100 km of the slope are less likely to be data-poor compared to other areas. In areas where there is extensive data on marine mammal density and use (*e.g.,* in the continental US EEZ), it may be inappropriate to use broader principles that could be helpful in identifying protected areas in data-poor areas. NOAA, Navy, other agencies, and many independent researchers have been conducting marine mammal research throughout the U.S. EEZ (200 mi from shore) for decades. The prevalence of research makes it less likely that important areas closer to shore have been overlooked.

NMFS acknowledges that large ocean areas such as the continental shelf and slope and seamounts may include habitat features that could provide important habitat for marine mammals at certain times—as the White Paper states, the higher primary productivity in these areas could generally be associated with higher densities of marine mammals. However, exposures to any individual animal are expected to be short term and intermittent, since a small number of ships would conduct SURTASS LFA sonar training and testing activities for up to 496 hours (years 1–4) and 592 hours (years 5–7) total for all ships combined annually. In addition, shutdown measures would avoid injury (PTS), most TTS, and severe behavioral responses, and coastal standoff zones and OBIAs would avoid disturbances more likely to lead to fitness impacts by further restricting activities in these areas of known biological importance for marine mammals. Therefore, the other proposed mitigation measures (which are currently in effect) would already limit most take of marine mammals to less severe Level B harassment (*e.g.,* short periods of changes to swim speed or calling patterns; alterations of dive profiles, etc.). As a result, there is little to no indication that there is a risk to marine mammal species or stocks that would be avoided or lessened if waters 100 km seaward of the continental slope were subject to restrictions.

Of note, in many areas the waters of the continental shelf/slope will be afforded significant protection due to the coastal standoff mitigation measure. In addition, review of designated OBIAs reveals that the majority include continental shelf/slope areas and similar coastal waters. Therefore, to the extent that some portion of the shelf/slope waters are important habitats, many are afforded protection due to the geographical restrictions already in place (coastal standoff and OBIAs), and NMFS has determined that the best available information justifies these measures under our evaluation framework set forth above.

Given the proposed mitigation measures, many of which are already in place under the NDE and have been in effect for many years under prior rules, takes of marine mammals would be limited to Level B harassment in the less severe range of behavioral reactions and some TTS, as described above. Consequently, the only additional anticipated value to restricting activities in continental shelf waters and waters 100 km seaward of continental slope would be some, though not a significant, reduction in the number of these less severe behavioral reactions in those areas. As discussed above, in general, not all behavioral responses rise to the level of a take and not all harassment takes result in fitness consequences to individuals that have the potential to translate to population consequences to the species or stock. For example, the energetic costs of short-term intermittent exposures to SURTASS LFA sonar (such as are expected here) would be unlikely to affect the reproductive success or survivorship of individuals. This means there is little to no likelihood that the impacts of the anticipated takes would accrue in a manner that would impact a species or stock even in the absence of any additional mitigation. Therefore, considered with the uncertain potential of this proposed recommendation to provide meaningful incremental reduction of risk or severity of impacts to individual marine mammals, NMFS concludes that this recommendation would not reasonably be expected to provide a reduction in the probability or degree of effects on any marine mammal species or stocks.

In addition to the mitigation measures in place for SURTASS LFA sonar that would already provide protection for continental shelf/slope waters, it is important to note that there are currently a total of four SURTASS LFA sonar ships that would be training and testing with up to a maximum of 496 transmission hours total, pooled across all vessels, per year in years one through four. While the Navy plans to add additional vessels beginning in year 5, the total transmission hours would be capped at 592 hours total regardless of the number of vessels. It is not known, nor does the Navy indicate in its plans, that activities of these existing or proposed new vessels would be focused in any specific area. It is likely, based on past monitoring reports, that the activities of the multiple vessels are spatially separated and not concentrated in a single area, and that they would not necessarily overlap marine mammal high-density areas for an extended period of time.

Consideration of practicability for restrictions in continental shelf waters and waters 100 km seaward of continental slope—NMFS and the Navy evaluated the practicability of implementation of the White Paper's recommended continental shelf, slope, and 100-km seaward restriction. The Navy has indicated, and NMFS concurs, that additional continental shelf, slope, and 100 km seaward restrictions beyond the territorial waters of foreign nations and the existing coastal standoff and OBIAs would unacceptably impact the Navy's national security mission, as large areas of the ocean would be

restricted where LFA sonar transmissions are required for training and testing proficiency in order for the ships' crews to understand how the system operates in these varied bathymetry conditions under future operational scenarios.

The submarine forces of several key adversaries are rapidly growing in size, capability, and geographic reach. Due to advancements in quieting technologies in diesel-electric and nuclear submarines, undersea threats are becoming increasingly difficult to locate using traditional passive acoustic technologies. Submarines from many nations are now much more capable and able to stay submerged for a longer period of time than earlier vessels. For both conventional diesel-electric and nuclear submarines, quieting technology has increased stealth and thus operational effectiveness. These technologies include air-independent propulsion (AIP), hull coatings that minimize echoes, sound isolation mounts for machinery, and improved propeller design. What once were unique U.S. design capabilities are now being employed in new submarine projects and as upgrades to older submarines throughout potential adversaries' navies. As this technology has improved, the predominant sources of ship noise (for example propeller noise or other machinery noise) have been reduced. Passive sonar involves listening for sounds emitted by a potentially hostile submarine in order to detect, localize, and track it. As submarines become quieter through improved sound dampening technology and innovative propeller design, the usefulness of passive sonar systems has greatly diminished. These submarines have the ability to carry many different weapons systems, including torpedoes, long-range anti-ship cruise missiles, anti-helicopter missiles, anti-ship mines, and ballistic nuclear missiles. These capabilities make submarines, both nuclear and diesel-electric powered, stealthy and flexible strategic threats.

The destruction of U.S. Carrier Strike Groups (CSGs) and Expeditionary Strike Groups (ESGs) is a focal point in the naval warfare doctrine of many adversaries' navies. The main threat that a carrier strike group must defend against is the undersea threat from enemy submarines. A single diesel-electric submarine that is capable of penetrating U.S. or multinational task force defenses could cause catastrophic damage to those forces, and jeopardize the lives of the thousands of Sailors and Marines onboard Navy ships. Even the threat of the presence of a quiet diesel submarine could effectively deny or delay U.S. or coalition naval forces access to vital operational areas. Long-range detection of threat submarines in near-shore and open ocean environments is critical for this effort.

Adequate and effective training and testing with SURTASS LFA sonar is necessary to ensure crews can operationally detect these quieter and harder to-find foreign submarines at greater distances. The Navy has indicated that if large areas of the continental shelf or slope were restricted beyond what is in the 12nmi/22km coastal standoff, the Navy would not have the benefit of being able to train and test in these challenging environments. Coastal, shallow environments are more acoustically complex and the SURTASS LFA system was designed to penetrate these environments to find quiet assets that may use these distinctive geographic features to their advantage. Year-round access to all of these areas of challenging topography and bathymetry is necessary so that crews learn how the SURTASS LFA system will operate amidst changing oceanographic conditions, including seasonal variations that occur in sound propagation.

Because these assets are forward deployed and can rapidly switch between training and testing activities and operational missions, there is limited flexibility for these ships to maneuver any substantial distance from primary mission areas of responsibility. Therefore, avoiding continental shelf and slope waters plus a 100 km buffer for training and testing activities would constitute a significant deviation in their staging requirements for other missions. Thus implementing this mitigation measure would be highly impracticable and would significantly adversely affect the availability of these assets to conduct their national security mission. Additionally, due to the slow speed at which these vessels transit (3 knots when towing SURTASS, 10–12 knots without) it does not allow for large scale movements on the orders of 100s of km proposed by the mitigation scheme of the White Paper to avoid a 100 km buffer around continental shelf and slope habitat.

Conclusion regarding restrictions in continental shelf waters and waters 100 km seaward of continental slope—In summary, restricting SURTASS LFA sonar use in waters 100 km seaward from the continental slope could potentially reduce individual exposures or behavioral responses for certain species and potentially provide some additional protection to individual animals in preferred habitat in some cases. However, density data indicate that certain mysticetes and sperm whales have higher densities in areas other than the continental slope and potential impacts from moving and focusing activities farther offshore would shift from more coastal species or stocks to more pelagic species or stocks, making any reduction in impacts uncertain. Further, limiting activities in these large areas of uncertain value to marine mammals when activities are comparatively low (small number of ships operating up to a maximum of 496 transmission hours total across all vessels in years 1–4 and 592 total transmission hours in years 5 and beyond pooled across all vessels, spread across several mission areas and over the course of an entire year), given the existing risks to the affected species and stocks are already so low, would provide little, if any, value for lowering the probability or severity of impacts to individual marine mammal fitness, much less species or stocks, or their habitat. Given the limited potential for additional reduction of impacts to marine mammal species beyond what the existing mitigation measures described in this rule provide, and the high degree of impracticability (significant impacts on training and testing effectiveness and the availability of these assets to support other national security missions), NMFS has preliminarily determined that adopting this recommendation is not warranted under the LPAI standard.

Restrictions Within 100 km of All Islands and Seamounts That Rise to Within 500 m of the Surface

Consideration of potential reduction of adverse impacts to marine mammal species and stocks and their habitat—Currently, waters surrounding all islands are included in the coastal standoff zone. Also, all foreign territorial waters have been provided the additional protection in this rulemaking that SURTASS LFA sonar will not be operated within these areas. As discussed previously, this means that SURTASS LFA sonar received levels would not exceed 180 dB re 1μPa within 22 km (12 nmi) from the coastline. Lastly, the Navy has agreed not to utilize SURTASS LFA sonar within Hawaii state waters (out to 3 nmi) or over Penguin Bank, and to limit ensonification of Hawaii state waters to 145 dB.

Regarding seamounts, Morato *et al.* (2010) state that seamounts were found to have higher species diversity within 30–40 km of the summit and tended to aggregate some visitor species (Morato

et al., 2008). However, as stated by the authors, the paper did not demonstrate that this behavior can be generalized. Further, the authors note that associations with seamounts have been described for some species of marine mammals (Morato *et al.,* 2008), mostly on an individual seamount scale. Morato *et al.* (2008) examined seamounts for their effect on aggregating visitors and noted that seamounts may act as feeding stations for some visitors, but not all seamounts seem to be equally important for these associations. While Morato *et al.* (2008) only examined seamounts in the Azores, the authors noted that only seamounts shallower than 400 m depth showed significant aggregation effects. Their results indicated that some marine predators (common dolphin (*Delphinus delphis*) and other non-marine mammal species such as fish and invertebrates) were significantly more abundant in the vicinity of some shallow-water seamount summits; there was no demonstrated seamount association for bottlenose dolphins (*Tursiops truncatus*), spotted dolphin (*Stenella frontalis*), or sperm whales (*Physeter macrocephalus*).

Along the northeastern U.S. continental shelf, cetaceans tend to frequent regions based on food preferences (*i.e.,* areas where preferred prey aggregate), with picscivores (fish-eating, *e.g.,* humpback, fin, and minke whales as well as bottlenose, Atlantic white-sided, and common dolphins) being most abundant over shallow banks in the western Gulf of Maine and mid-shelf east of Chesapeake Bay; planktivores (plankton-eating, *e.g.,* right, blue, and sei whales) being most abundant in the western Gulf of Maine and over the western and southern portions of Georges Bank; and teuthivores (squid eaters, *e.g.,* sperm whales) most abundant at the shelf edge (Fiedler, 2002). While there have been observations of humpback whales lingering at seamounts in the middle of the North Pacific on the way to summer feeding grounds in the Gulf of Alaska (Mate *et al.,* 2007), the purpose of these occurrences is not clear, and it may be that they are feeding, regrouping, or simply using them for navigation (Fiedler, 2002; Mate *et al.,* 2007); therefore, the role of the seamount habitat is not clear. According to Pitcher *et al.* (2007), there have been very few observations of high phytoplankton biomass (*i.e.,* high primary production, usually estimated from chlorophyll concentrations) over seamounts. Where such effects have been reported, all were from seamounts with summits shallower than 300 m, and the effects were not persistent, lasting only a few days at most. Therefore, it may be that food sources for many baleen whales are not concentrated in great enough quantities for significant enough time periods to serve as important feeding areas. While some odontocete (toothed) whales have been suggested to utilize seamount features for prey capture (Pitcher *et al.,* 2007), the authors conclude that the available evidence suggests that ''unlike many other members of seamount communities, the vast majority of marine mammal species are probably only loosely associated with particular seamounts.'' We note here that marine mammals being ''loosely associated'' with seamounts, or being observed lingering at certain seamounts, does not necessarily suggest a level of biological importance that would support geographical restrictions to avoid all seamounts, or even the specific seamounts where these loose aggregations occur. Further, as stated above, the short term, intermittent nature of the exposures to SURTASS LFA sonar would be unlikely to impact the fitness (via effects on reproduction or survival) of any individuals, especially given the existing/proposed mitigation. Therefore, considered with the uncertain potential of this proposed measure to provide meaningful additional reduction of impacts to individual marine mammals, this measure is not expected to provide a reduction in the probability or degree of effects on any marine mammal species or stocks.

Consideration of practicability for restrictions within 100 km of all islands and seamounts that rise to within 500 m of the surface—Please see the discussion of practicability for the White Paper recommendation above (protection of continental slope and a 100-km buffer), which is also applicable here. NMFS and the Navy evaluated the practicability of implementation of the White Paper's recommendation regarding island and seamounts that rise to within 500 m of the sea surface. The Navy has indicated, and NMFS concurs, that restrictions within 100 km of all islands and seamounts that rise to within 500 m of the surface beyond the existing coastal standoff and OBIAs would unacceptably impact their national security mission. Adequate and effective training and testing with SURTASS LFA is necessary to ensure crews can operationally detect quieter and harder to-find foreign submarines at greater distances. The Navy has indicated that if large areas of the continental shelf or slope were restricted beyond what is in the 12nmi/22km coastal standoff, the Navy would not have the benefit of being able to train and test in these challenging environments. Coastal, shallow environments are more acoustically complex and the SURTASS LFA system was designed to penetrate these environments to find quiet assets that may use these distinctive geographic features to their advantage. Year-round access to all of these areas of challenging topography and bathymetry is necessary so that crews learn how the SURTASS LFA system will operate amidst changing oceanographic conditions, including seasonal variations that occur in sound propagation.

As discussed previously with respect to a 100 km buffer around continental shelf and slope habitat, similar practicability concerns exist with implementing a 100 km buffer around all islands and seamounts. Because these assets are forward deployed and can rapidly switch between training and testing activities and operational missions, there is limited flexibility for these ships to maneuver any substantial distance from their primary mission areas of responsibility. Since seamounts and other areas of complex bathymetry are important training/testing features avoiding these areas would have negative impacts on training and testing preparedness and realism. Additionally, avoiding island associated and sea mount habitats by 100 km would constitute a significant deviation in the staging of these assets for other missions and would significantly impacting their potential for these vessels to conduct operational missions. Lastly, due to the slow speed at which these vessels transit (3 knots when towing SURTASS, 10–12 knots without) it does not allow for large scale movements on the orders of a 100 km proposed by the mitigation scheme of the White Paper without requiring extensive transmit time on and off station that would reduce training and testing opportunities and the ability of these assets to support other national security missions required of them.

Conclusion regarding restrictions within 100 km of all islands and seamounts that rise to within 500 m of the surface—In summary, while restricting LFA sonar training and testing in areas 100 km seaward from islands and seamounts could potentially reduce incidences of take within a limited number of species in preferred habitat in some cases (potential feeding), available data indicate that marine mammal associations with these areas are limited and the benefits would

be at best limited and/or ephemeral. Also, the habitat preferences for these areas seem to be more associated with mid and high frequency species, which are less sensitive to LFA sonar, thereby further lessening concern for the potential effects of LFA sonar. Limiting SURTASS LFA sonar training and testing activities in these large areas when activities are already comparatively low (small number of ships operating up to a maximum of 496 transmission hours total across all vessels in years 1–4 and 592 total transmission hours in years 5 and beyond pooled across all vessels, spread across several mission areas and over the course of an entire year) and the existing risks to the affected species and stocks are already so low, would provide little, if any, value for lowering the probability or severity of impacts to individual marine mammal fitness, much less species or stocks, or their habitat. Given the limited potential for additional reduction of impacts to a small number of marine mammal species and the high degree of impracticability (serious impacts on mission effectiveness), NMFS has determined that adopting this recommendation is not warranted under the LPAI standard.

High Productivity Regions That Are Not Included in the Continental Shelf, Continental Slope, Seamount, and Island Ecosystems

Consideration of potential for reduction of adverse impacts to marine mammal species and stocks and their habitat—Regions of high productivity have the potential to provide good foraging habitat for some species of marine mammals at certain times of the year and could potentially correlate with either higher densities and/or feeding behaviors through parts of their area. Productive areas of the ocean are difficult to consistently define due to interannual spatial and temporal variability. High productivity areas have ephemeral boundaries that are difficult to define and do not always persist interannually or within the same defined region. While there is not one definitive guide to the productive areas of the oceans, NMFS and the Navy examined these areas in the SURTASS LFA sonar study area. For instance, Huston and Wolverton (2009) show areas of high/highest productivity that are either (1) confined to high latitude (polar) areas that are not in the SURTASS LFA sonar study area, or (2) very coastally and typically seasonally associated with areas of high coastal runoff (*i.e.,* by river mouths), which are already encompassed by the coastal standoff range.

Areas of more moderate productivity are typically very large, which means that they are not concentrating high densities or feeding areas throughout their area. In fact, areas of moderate productivity scored within the mean and thus represent ''average'' habitat and would not necessarily be biologically important. These moderately productive habitats are likely to provide ample alternative opportunities for species to move into and take advantage of areas should they avoid the area around the SURTASS LFA sonar vessel. Additionally, as noted above, given the nature of SURTASS LFA sonar activities and the other mitigation for SURTASS LFA sonar, the existing risk to marine mammal species and stocks is low and is limited to less severe Level B harassment.

Consideration of practicability for restrictions for high productivity regions that are not included in the continental shelf, continental slope, seamount, and island ecosystems—NMFS and the Navy evaluated the practicability of implementation of the White Paper's recommended restrictions on high productivity areas. Please see the discussion of practicability for the first white paper recommendation above (continental slope plus buffer), which is also applicable here. The Navy has indicated, and NMFS concurs, that, additional restrictions in high productivity regions that are not included in the continental shelf, continental slope, seamount, and island ecosystems beyond the existing coastal standoff and OBIAs would unacceptably impact its national security mission. Because of the inconsistent and ephemeral boundaries associated with most high productivity regions, it would be difficult to define geographic restrictions that would not impinge upon the long-range detection abilities of the SURTASS LFA sonar system. The mission of SURTASS LFA sonar is to detect quieter and harder-to-find foreign submarines at greater distances. The Navy must train and test in open ocean regions to track relevant targets at long distances. If large areas of the ocean were excluded from potential usage, the Navy would not have the benefit of being able to train and test at the long ranges at which SURTASS LFA sonar has been designed to function most effectively. Further, because high productivity areas are highly variable and ephemeral, implementation would not be operationally practicable for the Navy.

Conclusion regarding restrictions in high productivity regions that are not included in the continental shelf, continental slope, seamount, and island ecosystems—Restricting use of SURTASS LFA sonar training and testing seasonally in high productivity areas could potentially reduce take numbers for certain species in preferred or feeding habitat in some cases. However, as noted above, the size of the primary productivity areas is such that animals could likely easily access adjacent high productivity areas should they be temporarily diverted away from a particular area due to a SURTASS LFA sonar source. In addition, marine mammals are not concentrated through all, or even most, of these large areas for all, or even most, of the time when productivity is highest. Therefore, a broad limitation of this nature would likely unnecessarily limit LFA sonar activities while providing only some slight benefit to a limited number of individuals, which would not rise to the level of value to marine mammal species or stocks. Limiting activities in these large areas when activities are already comparatively low (small number of ships operating up to a maximum of 496 transmission hours total across all vessels in years 1–4 and 592 total transmission hours in years 5 and beyond pooled across all vessels, spread across several mission areas and over the course of an entire year), given the existing risks to the affected species and stocks are already so low, would provide little, if any, value for lowering the probability or severity of impacts to individual marine mammal fitness, much less species or stocks, or their habitat. While we note that subjecting entire ''high productivity regions'' to geographical restrictions would provide little value, we also reiterate that over half of the existing OBIAs previously identified are in areas categorized as Class I (high productivity, >300 gC/m2-yr) or Class II (moderate productivity, 150–300 gC/m2-yr) ecosystems, based on SeaWiFS global primary productivity (see response to NRDC comment 20, 77 FR 50290, 50304 (August 20, 2012)). However, we also note that high productivity/foraging was not necessarily the qualifying criteria for all of these OBIAs, and being classified as a high productivity area does not necessarily mean the area serves as a biologically important area for marine mammal foraging. Given the limited potential for additional reduction of impacts to marine mammal species and the high degree of impracticability (serious impacts on mission effectiveness), NMFS has determined that adopting this recommendation is not warranted under the LPAI standard.

Overall Conclusion Regarding Consideration of the White Paper Recommendations

NMFS has considered the White Paper recommendations and acknowledges that they could potentially reduce the numbers of take for some individual marine mammals within a limited number of species, while in some cases, adopting the White Paper's guidelines could potentially increasing take of others species. NMFS also acknowledges that the White Paper's recommendations may add some small degree of protection in preferred habitat or during feeding behaviors in certain circumstances. However, the potential for impacts on reproduction or survival of any individuals, much less accrual to population level impacts, with the existing mitigation is already very low. As explained above, the minimal training and testing impacts and the anticipated, and demonstrated, success of the significant mitigation measures that the Navy is already implementing provide a large degree of protection and limit takes to less severe Level B harassment. Therefore, the highly limited and uncertain likelihood that the White Paper recommendations will further reduce impacts on individual marine mammal fitness, much less the affected species or stocks, and their habitat does not justify adopting the recommendations, especially when considered in light of the high degree of impracticability for Navy implementation.

Least Practicable Adverse Impact—Preliminary Conclusions

Based on our evaluation of the Navy's proposed mitigation measures as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the mitigation measures required by this proposed rule provide the means of effecting the least practicable adverse impact on marine mammals, species, or stock(s) and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The 2,000-yard LFA mitigation/buffer (shutdown) zone, based on detection of marine mammals from the highly effective three-part mitigation monitoring efforts (visual, as well as active and passive acoustic monitoring), and geographic restrictions (coastal standoff zone, and OBIAs plus the 1-km buffer) will enable the Navy to: (1) Avoid Level A harassment of marine mammals; (2) minimize the incidences of marine mammals exposed to SURTASS LFA sonar sound levels associated with TTS and more severe behavioral effects under Level B harassment; and (3) minimize marine mammal takes in areas and during times of important behaviors such as feeding, migrating, calving, or breeding or in areas where small resident populations reside or there is high density, further minimizing the likelihood of adverse impacts to species or stocks.

The SURTASS LFA sonar signal is not expected to cause mortality, serious injury, or PTS, due to implementation of the 2,000-yard LFA sonar mitigation/buffer zone, which will ensure that no marine mammals are exposed to an SPL greater than about 174 dB re: 1 μPa rms. As discussed above, a low-frequency cetacean would need to remain within 41 meters (135 ft) for an entire LFA sonar transmission (60 seconds) to potentially experience PTS and within 413 m (1,345 ft) for an entire LFA sonar transmission (60 seconds) to potentially experience TTS, which would be unlikely given typical avoidance behaviors even in the absence of mitigation. In addition to alleviating the likelihood of PTS, the implementation of the 2,000-yard LFA sonar shutdown zone mitigation measure will minimize the number of LF cetaceans likely exposed to LFA sonar at levels associated with the onset of TTS. The best information available indicates that effects from SPLs less than 180 dB re: 1 μPa will be limited to short-term, Level B harassment, and animals are expected to return to behaviors shortly after exposure.

Further, the implementation of OBIA measures and the coastal standoff allows the Navy to minimize or avoid impacts in important areas where behavioral disturbance and other impacts would be more likely to have negative energetic effects, or deleterious effects on reproduction, which could reduce the likelihood of survival or reproductive success (measures to avoid or lessen exposures of marine mammals within the coastal standoff zone and OBIAs); and generally lessen the total number of takes in areas of higher density for some species (coastal standoff measures). These measures, taken together, constitute the means of effecting the least practicable adverse impact on the affected species and stocks in the western and central North Pacific and eastern Indian Oceans in the upcoming seven-year LOA period. As described above, we evaluated the potential inclusion of additional measures (White Paper recommendations, critical habitat, etc.) before reaching this conclusion.

The SURTASS DSEIS/SOEIS evaluated the potential for impacts to marine habitats (marine mammals and otherwise) from SURTASS LFA sonar training and testing activities including critical habitat, essential fish habitat, marine protected areas, and national marine sanctuaries. SURTASS LFA sonar training and testing activities involve introduction of pressure and sound in the water column but will not alter physical habitat. Marine mammal prey will not be exposed to sustained duration and intensity of sound levels that would be expected to result in significant adverse effects to marine mammal food resources. Habitat impacts were considered within the context of the addition of sound energy to the marine environment while SURTASS LFA sonar is transmitting, which represents a vanishingly small percentage of the overall annual underwater acoustic energy budget that would not affect the ambient noise environment of marine habitats (refer to sections 4.4 and 4.5 of the SURTASS DSEIS/SOEIS). Therefore, with regard to habitat, NMFS has not identified any impacts to habitat from SURTASS LFA sonar that persist beyond the time and space that the impacts to marine mammals themselves and the water column could occur. Our mitigation targeted to minimize impacts to species or stocks while in particular habitats (*i.e.,* the coastal standoff and OBIAs) will protect preferred habitat during its use, and therefore is contributing to the means of effecting the LPAI on a species or stock *and* its habitat. Therefore, the mitigation measures that address areas that serve as important habitat for marine mammals in all or part of the year help effectuate the LPAI on marine mammal species and stocks and their habitat.

The Ninth Circuit's *Pritzker* decision faulted NMFS for considering the White Paper mitigation recommendations for ''data-poor areas'' against the OBIA standards NMFS had set for the 2012 rule. We do not read the opinion as holding that the MMPA compelled a change in the criteria and process for evaluating OBIAs. NMFS addressed the Court's decision by separately and independently evaluating the White Paper's recommendations for benefits to the affected species or stocks and practicability, without regard to the OBIA criteria or process. (See NMFS' evaluation of the White Paper in this rule.) Using the best available information, NMFS considered the recommendations in the White Paper under our interpretation of the LPAI

standard and determined the measures (as well as a smaller buffer distance) were not warranted, as described in that section.

In reaching the conclusion that NMFS' record for the 2012 rule did not establish the agency had satisfied the LPAI standard, the Court determined that NMFS failed to consider an important aspect of the problem, ''namely the underprotection that accompanies making conclusive data an indispensable component of OBIA designation,'' and that this ''systematic underprotection of marine mammals'' cannot be consistent with the requirement that mitigation measures result in the ''least practicable adverse impact'' on marine mammals.'' *Id.* at 1140. While we have corrected the identified deficiency by evaluating the White Paper measures independent of the OBIA process, we disagree with the suggestion that our mitigation is systematically underprotective.

We first emphasize that NMFS' OBIA informational standards (and other mitigation measures), while data-driven, do not require scientific certainty or conclusive data. This is illustrated by the fact that the OBIA screening criteria allow for consideration of a variety of information sources, including historic whaling data, stranding data, sightings information, and regional expertise, to name a few examples of the ''data'' considered—and, in fact, the only areas that were not considered were those considered to have entirely inconclusive data. As more detailed in Appendix D of the 2012 SEIS/SOEIS, supporting documents that are considered include peer-reviewed articles; scientific committee reports; cruise reports or transects; personal communications or unpublished reports; dissertations or theses; books, government reports, or NGO reports; and notes, abstracts, and conference proceedings. The process set up for the 2012 rule carried forward areas for consideration if they had sufficient scientific support for the relevant criterion based on a ranking of 2 or higher on a scale developed for that purpose, with zero being the lowest and four the highest. Even areas that were ranked ''2'' (''*Supporting information derived from habitat suitability models (non-peer reviewed), expert opinion, regional expertise, or gray (non-peer reviewed) literature, but requires more justification*'') were deemed ''eligible'' for further consideration (77 FR 50290, 50299 (August 20, 2012)).

In fact, NMFS has previously designated OBIAs for areas based on these types of information sources. For example, the Olympic Coast OBIA (OBIA #21) had a ranking of 2 for foraging by humpback whales as documented in one peer-reviewed report (p.D–319, DoN 2012). Based on the results of that study, the Olympic Coast OBIA was reviewed and designated. Other examples include the Southwest Australia Canyons OBIA, which considers past whaling data but also more recent sighting and stranding information; and the boundary for the Eastern Gulf of Mexico OBIA, which was drawn to ''conservatively encompass'' waters where Bryde's whales may occur based on sightings information (as opposed to scientific validation of their occurrence). In addition, even though most available data is only available for inshore waters (within the coastal standoff for SURTASS LFA sonar training and testing activities), NMFS is considering an area adjacent and seaward of these areas in the Ogasawara Island region as an OBIA as part of this rulemaking due to the importance of the nearshore area for humpback whales.

Thus, NMFS does not insist on an ''unattainable'' evidentiary standard of ''conclusive data'' [5] for imposing conservation and management measures for SURTASS LFA sonar, including—though not only—in the case of OBIAs. As another example, the coastal standoff zone uniformly applies not only in areas with supporting data about marine mammals (80 percent of the areas initially identified for OBIA consideration were within the 12 nmi/22 km coastal standoff) but also in areas that could be fairly characterized as data poor.

Finally, because the LPAI standard authorizes NMFS to weigh a variety of factors when evaluating appropriate mitigation measures, it does not compel mitigation for every kind of individual take, even when practicable for implementation by the applicant. Thus, we do not evaluate measures strictly on the basis of whether they will reduce *taking.* The focus is on the relevant contextual factors that more meaningfully assess a measure's value in contributing to the standard of minimizing *impacts to the affected species or stock and its habitat.* It is also relevant to consider a measure in the context of the nature and extent of the expected impacts and the value of other mitigation that will be implemented.

NMFS has evaluated the likely effects of SURTASS LFA sonar training and testing activities and has required measures to minimize the impacts to the affected species or stocks and their habitat to achieve the LPAI. Consistent with our interpretation of LPAI, the LFA shutdown and coastal exclusion zone are practicable for the Navy and effective in minimizing impacts on marine mammals from activities that are likely to increase the probability or severity of population level effects—*wherever* marine mammals occur, even in areas where data are limited. Therefore, as we have said, NMFS' mitigation requirements do not proceed as if the ''no data'' scenario is the equivalent to ''zero population density'' or ''no biological importance.'' [6] The LFA shutdown zone will avoid or minimize auditory impacts and more severe forms of Level B harassment, *wherever* marine mammals occur. The coastal exclusion zone will reduce adverse impacts, specifically higher numbers of take or take in areas of preferred habitat for coastal species that are present in higher numbers, or through lessening the severity of impacts by minimizing take of individuals in shelf or slope areas encompassed by the standoff, when that habitat is preferred by some species (again, when NMFS assessed areas that met the criteria for OBIAs for its 2012 rule, 80 percent of the identified areas fell within the 12 nautical mi coastal exclusion zone.) In addition, NMFS designated OBIAs where supporting information sufficiently demonstrated the areas met the established criteria and they were determined to be practicable, which are expected to reduce the likelihood of impacts that would adversely affect reproduction or survival.

We have assessed all recommendations and the best available science and are aware of no other practicable measures that would further reduce the probability of impacts to species or stocks. In other words, the proposed measures that NMFS included in this proposed rule will effect the least practicable adverse impact on the affected species or stocks. As discussed in the Adaptive Management section, NMFS will systematically consider new information and re-evaluate as necessary if applicable new information becomes available.

Proposed Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to issue an ITA for an activity, NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for LOAs must include the suggested means of

[5] *NRDC* v. *Pritzker,* 828 F.3d 1125, 1140 (9th Cir. 2016).

[6] White paper at p. 1.

accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking, or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

- An increase in our understanding of how many marine mammals are likely to be exposed to levels of LFA sonar that we associate with specific adverse effects, such as disruption of behavioral patterns and TTS (Level B harassment), or PTS;
- An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to LFA sonar (at specific received levels or other stimuli expected to result in take);
- An increase in our understanding of how anticipated takes of individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival);
- An increase in knowledge of the affected species;
- An increase in our understanding of the effectiveness of certain mitigation and monitoring measures;
- A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization; and
- An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to better achieve the above goals.

In addition to the real-time monitoring associated with mitigation, the Navy is engaging in exploring other monitoring efforts described here:

Marine Mammal Monitoring (M3) Program

Beginning in 1993, the Marine Mammal Monitoring (M3) Program was designed to assess the feasibility of detecting and tracking marine mammals. The M3 program uses the Navy's fixed and mobile passive acoustic monitoring systems to monitor the movements of some large cetaceans (principally baleen whales), including their migration and feeding patterns, by tracking them through their vocalizations. This Program has evolved into a valuable tool by which the acoustic activity levels of vocalizing whales can be quantitatively documented and trends of oceanic ocean noise levels measured over ecologically meaningful ocean scales and time periods under varying noise conditions.

As part of the research and monitoring component of the SURTASS LFA sonar program, M3 data are collected to:

- Document occurrence, distribution, and behaviors of acoustically active whale species over ocean basin and decadal scales;
- Assess changes in marine mammal activity levels under normal conditions (*e.g.,* weather, wind, time of year, or time of day) relative to acoustic conditions with varying levels of anthropogenic noise (*e.g.,* seismic activities, naval sonar, shipping, or fishing activities);
- Inform environmental assessments of current and future anti-submarine warfare systems; and
- Assemble a long-term database of ocean ambient noise data to enable scientifically-based evaluations of potential influences on cetaceans or other species.

Acoustic data collected and archived by the M3 program allow program analysts to statistically quantify how cetacean acoustic behaviors are affected by various factors, such as ocean basin topographic features, hydrographic conditions, seasonality, time, weather conditions, and ambient noise conditions. The compiled acoustic data can be used to estimate the total number of vocalizing whales per unit area as well as document the seasonal or localized movements of individual animals. In addition, observations over time can also show the interaction and influence of noise sources on large whale behavior.

At present, the M3 Program's data are classified, as are the data reports created by M3 Program analysts, due to the inclusion of sensitive national security information. The Navy (OPNAV N974B) continues to assess and analyze M3 Program data collected from Navy passive acoustic monitoring systems and is working toward making some portion of that data (after appropriate security reviews) available to scientists with appropriate clearances and ultimately to the public. Additionally, data summaries are shared with NMFS analysts with appropriate clearances. Progress has been achieved on addressing securing concerns and declassifying a report of fin whale singing and swimming behaviors from which a scientific paper has been submitted to a scientific journal for review (DoN, 2015). In addition, information on detections of western gray whale vocalizations has been shared with the IUCN on possible wintering areas for this species.

Additional Ranked Monitoring Projects Under Consideration

Due to research indicating that beaked whales and harbor porpoises may be particularly sensitive to a range of underwater sound (Southall *et al.,* 2007; Tyack *et al.,* 2011; Kastelein *et al.,* 2012), in the 2012 rule and LOAs for these activities, NMFS included conditions for increasing understanding of the potential effects of SURTASS LFA sonar on these taxa. The Navy convened an independent Scientific Advisory Group (SAG), composed of six scientists affiliated with two universities, one Federal agency (NMFS), and three private research and consultancy firms, to investigate and assess different types of research and monitoring methods that could increase the understanding of the potential effects to beaked whales and harbor porpoises from exposure to SURTASS LFA sonar transmissions. The SAG submitted a report (''Potential Effects of SURTASS LFA sonar on Beaked Whales and Harbor Porpoises'') describing their monitoring and research recommendations. This report was submitted to the Executive Oversight Group (EOG) for SURTASS LFA sonar, which is comprised of representatives from the U.S. Navy (Chair, OPNAV N2/N6F24), Office of the Deputy Assistant Secretary of the Navy for the Environment, Office of Naval Research, Navy Living Marine Resources Program, and the NMFS Office of Protected Resources (OPR) Permits and Conservation Division. The EOG met twice in 2014 to review and further discuss the research recommendations put forth by the SAG, the feasibility of implementing any of the research efforts, and existing budgetary constraints. Representatives from the Marine Mammal Commission also attended EOG meetings as observers. In addition to the SAG recommendations, promising suggestions for monitoring and research were recommended for consideration by the EOG. The EOG considered which efforts would be most effective, given existing budgetary constraints and the Navy has submitted the outcome of this study to NMFS.

In summary, after consideration of the SAG recommendations and the inputs provided by the EOG, the research monitoring studies were ranked as follows. In addition to the topic, the approximate cost of the research effort is also listed. Those study topics which the Navy has invested in since the EOG recommendations are also indicated below.

The category of research recommendations that were ranked

highest included those estimated to cost less than $100,000.

1. Desktop study of potential overlap of harbor porpoise habitat by SURTASS LFA sonar transmissions. The Navy funded this study and the report has been submitted to NMFS. In summary the report finds that, while harbor porpoises could potentially be exposed to SURTASS LFA sonar transmissions, exposure is likely to occur at reduced sound levels with limited potential for behavioral responses. The full report is available at *http://www.surtass-lfa-eis.com.*

2. Review existing high frequency acoustic recording package (HARP) data to determine spatiotemporal overlap with SURTASS LFA missions. NMFS contacted Erin Oleson (NOAA) about deployments in the western and central North Pacific and John Hildebrand (Scripps) about deployments in the eastern North Pacific. Since the EOG, Baumann-Pickering *et al.* (2014) presented the results of over eleven cumulative years of HARP deployments in the North Pacific, which may overlap with SURTASS LFA missions. It would be fairly straightforward and require minimal cost to determine the spatiotemporal overlap of HARP deployments and LFA missions. If it was determined that overlap existed, the cost for data analysis would depend on the amount of overlap.

The second-highest ranked group of recommendations consisted of studies that are estimated to cost in the $100,000–$500,000 range, but for which methodologies exist and implementation would extend existing studies.

1. Targeted deployment of one HARP sensor in the western North Pacific for one year; approximate estimated cost of $250,000. The objective of this study would be to document beaked whale vocal behavior before, during, and after LFA sonar transmissions. Careful consideration of lessons learned from previous deployments would be needed to increase the probability of a successful project.

2. Anatomical modeling of LF sound reception by beaked whales; approximate estimated cost of $150,000–$200,000. Since the EOG meetings in 2014, Cranford and Krysl (2015) presented a synthetic audiogram for a fin whale, predicted based predominantly on bone conduction of sound through the head to the ear. NMFS (2016) noted that the predicted audiogram does not match the typical U-shaped audiogram expected with normal hearing in mammals in that there is a ''hump'' at low frequencies and shallow roll-off of sensitivity at high frequencies. Given these difficulties, additional funding would be required to determine the source of the abnormal results. The Navy is continuing to invest in LF cetacean audiogram development and recently released a Broad Agency Announcement in coordination with the Subcommittee on Ocean Science and Technology—Ocean Noise and Marine Life Task force to make further investment in this area.

The final group of recommendations are studies that require additional methodological developments and/or would cost greater than $500,000.

1. Controlled exposure estimates (CEE) for beaked whales with an appropriate LF source. There are many complexities associated with this recommendation, even more so considering the results of the ongoing mid-frequency sonar behavioral response studies (BRS) demonstrating the importance of real-world exposures for characterizing behavioral responses. It is possible that existing LF sources already in use on Navy ranges could be surrogates for SURTASS LFA sonar, but such extrapolations would need to be considered carefully. SURTASS LFA sonar is currently authorized for use in the western and central North Pacific and Indian oceans, regions in which CEEs have not been conducted, making experiments with the LFA system itself particularly difficult. Given the cost and complexities associated with this recommendation, it was ranked as a lower priority. This recommendation should also be revisited with future development of tagging technologies for harbor porpoises.

2. LF behavioral audiograms for harbor porpoise or LF auditory brainstem response/auditory evoked potential (ABR/AEP) audiograms for beaked whales. Since the EOG concluded, the Navy funded a study led by Dr. James Finneran (*http://greenfleet.dodlive.mil/files/2017/05/LMRFactSheet_Project9.pdf*) to correlate AEP measurements of hearing sensitivity with perceived loudness (Muslow *et al.,* 2015). Part of this study included attempts to extend the LF range of AEP measurements, which may be transferable to studies of hearing sensitivity of harbor porpoise or beaked whales. There are difficulties with the transmission of LF sounds, in achieving the required power with manageable laboratory systems and creating a far-field sound field consistent across the measurement experiment. The final results of the study have not been published yet, but the study found that AEPs were only successful down to frequencies of 10 kHz for bottlenose dolphins (where 10 kHz is the upper range of what is considered mid-frequency) and 1 kHz for California sea lions (the upper range of what is considered low-frequency). In addition, the correlation of equal latency contours only applied over a limited frequency range, providing limited benefit beyond the frequency range of auditory thresholds. Therefore, it is currently not feasible to conduct ABR/AEPs at frequencies within the range of SURTASS LFA sonar (100 to 500 Hz). Finally, the Navy funded audiograms and TTS studies for harbor porpoise across its entire frequency range (Kastelein *et al.,* 2017). This study reported the hearing sensitivity of a six-year-old female and a three-year-old male harbor porpoise as measured by using a standard psycho-acoustic technique under low ambient noise conditions. The porpoises' hearing thresholds for 13 narrow-band sweeps with center frequencies between 0.125 and 150 kHz were established. The range of most sensitive hearing (defined as within 10 dB of maximum sensitivity) was from 16 to 140 kHz. Sensitivity declined sharply above 125 kHz. Hearing sensitivity in the low frequencies 125 Hz to 1 kHz were 40–80 dB above their maximum sensitivity.

The Navy has obtained a permit from the NMFS marine mammal health and stranding program to conduct an AEP audiogram on a stranded beaked whale, but to date none have stranded alive in an area with staff suitable to conduct the testing. The Navy will continue to seek opportunities to conduct such research should they arise.

The ranking of research and monitoring recommendations has helped inform Navy and NMFS decision makers of the scientific priority, feasibility, and cost of possible experiments to increase understanding of potential effects of SURTASS LFA sonar on harbor porpoises and beaked whales. Discussions among Navy decision makers from OPNAV N2/N974B/N45, Office of the Deputy Assistant Secretary of the Navy for the Environment, Office of Naval Research, and Navy Living Marine Resources Program will continue to leverage research among various programs. Ongoing discussions between Navy and NMFS will continue to evaluate the most efficient and cost-effective way forward for Navy research and environmental compliance monitoring efforts once the amount of funding authorized is known.

Ambient Noise Data Monitoring

Several efforts (federal and academic) are underway to develop a comprehensive ocean noise budget (*i.e.,*

an accounting of the relative contributions of various underwater sources to the ocean noise field) for the world's oceans that includes both anthropogenic and natural sources of noise. Ocean noise distribution and noise budgets are used in marine mammal masking studies, habitat characterization, and marine animal impact analyses.

The Navy will collect ambient noise data when the SURTASS passive towed horizontal line array is deployed. However, because the collected ambient noise data may also contain sensitive acoustic information, the Navy classifies the data, and thus does not make these data publicly available. The Navy is exploring the feasibility of declassifying and archiving portions of the ambient noise data for incorporation into appropriate ocean noise budget efforts after all related security concerns have been resolved.

Research

The Navy sponsors significant research for marine living resources to study the potential effects of its activities on marine mammals. OPNAV N974B provides a representative to the Navy's Living Marine Resources advisory board to provide input to future research projects that may address SURTASS LFA sonar needs. The most recently available data are for Fiscal Year 2015, in which the Navy reported that it spent $35.9 million that year on marine mammal research and conservation (Marine Mammal Commission, 2017). This ongoing marine mammal research relates to hearing and hearing sensitivity, auditory effects, marine mammal monitoring and detection, noise impacts, behavioral responses, diving physiology and physiological stress, and distribution. The Navy sponsors a significant portion of U.S. research on the effects of human-generated underwater sound on marine mammals and approximately 50 percent of such research conducted worldwide. These research projects may not be specifically related to SURTASS LFA sonar activities; however, they are crucial to the overall knowledge base on marine mammals and the potential effects from underwater anthropogenic noise. The Navy also sponsors research to determine marine mammal abundances and densities for all Navy ranges and other operational areas. The Navy notes that research and evaluation is being carried out on various monitoring and mitigation methods, including passive acoustic monitoring, and the results from this research could be applicable to SURTASS LFA sonar passive acoustic monitoring. The Navy has also sponsored several workshops to evaluate the current state of knowledge and potential for future acoustic monitoring of marine mammals. The workshops bring together underwater acoustic subject matter experts and marine biologists from the Navy and other research organizations to present data and information on current acoustic monitoring research efforts, and to evaluate the potential for incorporating similar technology and methods on Navy instrumented ranges.

Proposed Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. There are several different reporting requirements in these proposed regulations:

Notification of the Discovery of a Stranded Marine Mammal[7]

The Navy will systematically observe SURTASS LFA sonar activities for injured or disabled marine mammals. In addition, the Navy will monitor the principal marine mammal stranding networks and other media to correlate analysis of any whale mass strandings that could potentially be associated with SURTASS LFA sonar activities.

In the event of a live stranding (or near-shore atypical milling) event where a stranding network has confirmed the status and location of the stranding, NMFS (individuals specifically identified in the Stranding Communication Protocol, NMFS Office of Protected Resources (OPR)—HQ senior administrators) would advise the Navy of the need to implement shutdown procedures for any use of SURTASS LFA sonar within 50 km (27 nmi) of the stranding.

Minimization of Harm to Live-Stranded (or Milling) Marine Mammals

In the event of a live stranding (or near-shore atypical milling) event, NMFS would advise the Navy of the need to implement shutdown procedures for any use of SURTASS LFA sonar within 50 km (27 nmi) of the stranding. Following this initial shutdown, NMFS would communicate with the Navy to determine if circumstances support any modification of the shutdown zone. The Navy may decline to implement all or part of the shutdown if the holder of the LOA, or his/her designee, determines that it is necessary for national security. Shutdown procedures for live stranding or milling marine mammals include the following:

- If at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts that were occurring are stopped, NMFS (individuals specifically identified in the Stranding Communication Protocol) would immediately advise the Navy that the shutdown around that animal(s)' location is no longer needed;
- Otherwise, shutdown procedures would remain in effect until NMFS (individuals specifically identified in the Stranding Communication Protocol) determines and advises the Navy that all live animals involved have left the area (either of their own volition or following an intervention); and
- If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the Navy may be required to determine what measures are necessary to minimize that likelihood (*e.g.,* extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

Shutdown procedures are not related to the investigation of the cause of the stranding and their implementation is not intended to imply that Navy activity is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that contributed to the stranding.

Navy Discovery of Any Stranded Marine Mammal

In the event that Navy personnel (uniformed military, civilian, or contractors conducting Navy work) associated with operating a T–AGOS class vessel discover a live or dead stranded marine mammal at sea, the Navy shall report the incident to NMFS (see communication protocols below) as soon as is feasible. The Navy will provide NMFS with:

- Time, date, and location (latitude/longitude) of the first discovery (and

[7] As defined in Title IV of the MMPA, a ''stranding'' is defined as ''*an event in the wild in which (A) a marine mammal is dead and is (i) on a beach or shore of the United States, or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and 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.*''

updated location information if known and applicable);

- Species identification (if known) or description of the marine mammal(s) involved;
- Condition of the marine mammal(s) (including carcass condition if the marine mammal is dead);
- Observed behaviors of the marine mammal(s), if alive;
- If available, photographs or video footage of the marine mammal(s); and
- General circumstances under which the marine mammal was discovered (*e.g.,* vessel transit).

Vessel Strike

In the event of a ship strike of a marine mammal by any T–AGOS class vessel, the Navy shall immediately report, or as soon as security clearance procedures and safety conditions allow, the information above in *Discovery of Any Stranded Marine Mammal* subsection, to NMFS. As soon as feasible, but no later than seven (7) business days, the Navy shall additionally report to NMFS, the:

- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what training or testing activity was being conducted (if applicable);
- Status of all sound sources in use (*e.g.,* active sonar);
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid marine mammal strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the marine mammal strike;
- Estimated size and length of marine mammal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the marine mammal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.);
- To the extent practicable, photographs or video footage of the struck marine mammal(s); and
- Any relevant information discovered during Navy's investigation of the ship strike.

Annual Report

The classified and unclassified annual reports, which are due no later than 60 days after the anniversary of the effective date of the seven-year LOA, would provide NMFS with a summary of the year's training and testing transmission hours. Specifically, the classified reports will include dates/times of exercises, location of vessel, mission operational area, location of the mitigation zone in relation to the LFA sonar array, marine mammal observations, and records of any delays or suspensions of activities. Marine mammal observations would include animal type and/or species, number of animals sighted by species, date and time of observations, type of detection (visual, passive acoustic, HF/M3 sonar), the animal's bearing and range from vessel, behavior, and remarks/narrative (as necessary). The classified and unclassified reports would include the Navy's analysis of take by Level B harassment and estimates of the percentage of marine mammal stocks affected for the year by SURTASS LFA sonar training and testing activities. The Navy's estimates of the percentage of marine mammal stocks and number of individual marine mammals affected by exposure to SURTASS LFA sonar transmissions would be derived using acoustic impact modeling based on operating locations, season of missions, system characteristics, oceanographic environmental conditions, and marine mammal demographics.

Additionally, the annual report would include: (1) Analysis of the effectiveness of the mitigation measures with recommendations for improvements where applicable; (2) assessment of any long-term effects from SURTASS LFA sonar activities; and (3) any discernible or estimated cumulative impacts from SURTASS LFA sonar training and testing activities.

Comprehensive Report

NMFS proposes to require the Navy to provide NMFS and the public with a final comprehensive report analyzing the impacts of SURTASS LFA sonar training and testing activities on marine mammal species and stocks. This report would include an in-depth analysis of all monitoring and Navy-funded research pertinent to SURTASS LFA sonar activities conducted during the 7-year period of these regulations, a scientific assessment of cumulative impacts on marine mammal stocks, and an analysis on the advancement of alternative (passive) technologies as a replacement for LFA sonar. This report would be a key document for NMFS' review and assessment of impacts for any future rulemaking.

The Navy will respond to NMFS comments and requests for additional information or clarification on the annual or comprehensive reports. These reports will be considered final after the Navy has adequately addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment within the three-month time period. NMFS will post the annual and comprehensive reports on the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Adaptive Management

Our understanding about marine mammals and the potential effects of SURTASS LFA sonar on marine mammals is continually evolving. Reflecting this, the proposed rule again includes an adaptive management framework. This allows the agencies to consider new/revised peer-reviewed and published scientific data and/or other information from qualified and recognized sources within academia, industry, and government/non-government organizations to determine (with input regarding practicability) whether SURTASS LFA sonar mitigation, monitoring, or reporting measures should be modified (including additions or deletions) and to make such modification if new scientific data indicate that they would be appropriate. Under this proposed rule, modifications that are substantial would be made only after a 30-day period of public review and comment. Substantial modifications include a change in training and testing areas or new information that results in significant changes to mitigation.

As discussed in the Mitigation section above, NMFS and Navy have refined the adaptive management process for this rule compared to previous rulemakings. In the 2012 rule, NMFS and the Navy annually considered how new information, from anywhere in the world, should be considered in an adaptive management context—including whether this new information would support the identification of new OBIAs or other mitigation measures. Moving forward, new information will still be considered annually, but for the purposes of OBIA identification, only in the context of the areas covered by the proposed rule. New information will still be considered annually, but only in the western and central North Pacific and eastern Indian Oceans in which SURTASS LFA assets will train and test.

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 the numbers of marine mammals that might be taken through mortality, serious injury, and Level A or Level B harassment (although only Level B harassment is authorized by this proposed rule), NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity and duration), the context of any response (*e.g.,* critical reproductive time or location, migration, etc.), as well as effects on habitat, the status of the affected stocks, 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 these analyses 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, the discussion of our analyses applies to all the stocks listed in Table 18 (including those for which density and take estimates have been pooled), because the anticipated effects of this activity on these different marine mammal stocks are expected to be similar, given the operational parameters of the activity. While there are differences in the hearing sensitivity of different groups, these differences have been factored into the analysis for auditory impairment. However, the nature of their behavioral responses is expected to be similar for SURTASS LFA sonar, especially given the context of their short duration and open ocean exposures. Additionally, with the operational avoidance of areas that are known to be important for specific biologically important reasons and coastal standoff zones and the anticipated low-level effects, there is no need to differentially evaluate species based on varying status. Where there is a notable difference in the proportion of authorized takes (as compared to abundance) for two species, we explicitly address it below.

The Navy has described its specified activities based on best estimates of the number of hours that the Navy will conduct SURTASS LFA training and testing activities. The exact number of transmission hours may vary from year to year, but will not exceed the annual total of 496 transmission hours for all vessels in years 1–4 (currently four vessels), or the annual total of 592 transmission hours for all vessels in years 5–7 regardless of the number of vessels in use. (Previous SURTASS LFA sonar rulemakings evaluated and authorized 432 transmission hours per vessel per year.)

As mentioned previously, NMFS estimates that 46 species of marine mammals representing 139 stocks could be taken by Level B harassment over the course of the seven-year period. For reasons stated previously, no mortalities or injuries are anticipated to occur as a result of the Navy's proposed SURTASS LFA sonar training and testing activities, and none are proposed to be authorized by NMFS. The Navy has operated SURTASS LFA sonar under NMFS regulations for the last 17 years without any reports of serious injury or death. The evidence to date, including recent scientific reports, annual monitoring reports, and 17 years of experience conducting SURTASS LFA activities, further supports the conclusion that the potential for injury, and particularly serious injury, to occur is minimal.

Regarding the potential for mortality, as described previously, neither acoustic impacts resulting in stranding nor ship strikes are expected to result from SURTASS LFA training and testing. There is no empirical evidence of strandings or ship strikes of marine mammals associated spatially or temporally with the employment of SURTASS LFA sonar. Moreover, the sonar system acoustic characteristics differ between LFA sonar and MF sonars that have been associated with strandings: LFA sonars use frequencies from 100 to 500 Hz, with relatively long signals (pulses) on the order of 60 sec, while MF sonars use frequencies greater than 1,000 Hz, with relatively short signals on the order of 1 sec. NMFS also makes a distinction between the common features shared by the stranding events associated with MF sonar in Greece (1996), Bahamas (2000), Madeira (2000), Canary Islands (2002), Hanalei Bay (2004), and Spain (2006), referenced above. These included operation of MF sonar, deep water close to land (such as offshore canyons), presence of an acoustic waveguide (surface duct conditions), and periodic sequences of transient pulses (*i.e.,* rapid onset and decay times) generated at depths less than 32.8 ft (10 m) by sound sources moving at speeds of 2.6 m/s (5.1 knots) or more during sonar operations (D'Spain *et al.,* 2006). None of these features relate to the proposed SURTASS LFA sonar training and testing activities. Regarding the potential for ship strike, given the number of vessels, densities of marine mammals in the area of operation, mitigation, and ship speed, the potential of strike is so low as to be discountable.

NMFS neither anticipates nor proposes to authorize Level A harassment of marine mammals as a result of these activities. The proposed mitigation measures (including visual monitoring along with active and passive acoustic monitoring, which has been shown to be over 98 percent effective at detecting marine mammals, and implementing a shutdown zone of 2,000 yds around the LFA sonar array and vessel) would allow the Navy to avoid exposing marine mammals to received levels of SURTASS LFA sonar or HF/M3 sonar sound that would result in injury (Level A harassment) and, as discussed in the Estimated Take of Marine Mammals section, TTS and more severe behavioral reactions would also be minimized due to mitigation measures, so that the majority of takes would be expected to be in the form of less severe Level B harassment.

As noted above, the context of exposures is important in evaluating the ultimate impacts of Level B harassment on individuals. In the case of SURTASS LFA sonar, the approaching sound source would be moving through the open ocean at low speeds, so concerns of noise exposure are somewhat lessened in this context compared to situations where animals may not be as able to avoid strong or rapidly approaching sound sources. In addition, the duration of the take is important; in the case of SURTASS LFA sonar, the vessel continues to move and any interruption of behavior would be of relatively short duration. Further, NMFS and the Navy have imposed geographic restrictions that minimize behavioral disruption in times and areas where impacts would be more likely to lead to effects on individual fitness that could impact the species or stock.

For SURTASS LFA sonar training and testing activities, the Navy provided information (Table 7–1 of the Navy's application) estimating incidental take numbers and percentages of marine mammal stocks that could potentially occur due to SURTASS LFA sonar training and testing activities based on

the 15 model areas in the central and western North Pacific and eastern Indian Oceans. Based on our evaluation, incidental take from the specified activities associated with the proposed SURTASS LFA sonar training and testing activities will most likely fall within the realm of short-term and temporary, or ephemeral, disruption of behavioral patterns (Level B harassment), will not include Level A harassment, and is not expected to impact reproduction or survival of individuals. NMFS bases this assessment on a number of factors (discussed in more detail in previous sections) considered together:

(1) Geographic Restrictions—The coastal standoff and OBIA geographic restrictions on SURTASS LFA sonar training and testing activities are expected to minimize the likelihood of disruption of marine mammals in areas where important behavior patterns such as migration, calving, breeding, feeding, or sheltering occur, or in areas with small resident populations or higher densities of marine mammals. As a result, the takes that occur are less likely to result in energetic effects or disturbances of other important behaviors that would reduce reproductive success or survivorship.

(2) Low Frequency Sonar Scientific Research Program (LFS SRP)—The Navy designed the three-phase LFS SRP study to assess the potential impacts of SURTASS LFA sonar on the behavior of low-frequency hearing specialists, those species believed to be at (potentially) greatest risk due to the presumed overlap in hearing of these species and the frequencies at which SURTASS LFA sonar is operated. This field research addressed three important behavioral contexts for baleen whales: (1) Blue and fin whales feeding in the southern California Bight, (2) gray whales migrating past the central California coast, and (3) humpback whales breeding off Hawaii. These experiments, which exposed baleen whales to received levels ranging from 120 to about 155 dB re: 1 μPa, confirmed that some portion of the total number of whales exposed to LFA sonar responded behaviorally by changing their vocal activity, moving away from the source vessel, or both, but the responses were short-lived and animals returned to their normal activities within tens of minutes after initial exposure. While some of the observed responses would likely be considered ''take'' under the MMPA, these short-term Level B harassment responses do not necessarily constitute significant changes in biologically important behaviors. In addition, these experiments illustrated that the context of an exposure scenario is important for determining the probability, magnitude, and duration of a response. This was shown by the fact that migrating gray whales responded to a sound source in the middle of their migration route but showed no response to the same sound source when it was located offshore, outside the migratory corridor, even when the source level was increased to maintain the same received levels within the migratory corridor.

Although the LFS SRP study is nearly two decades old, the collected behavioral response data remain valid and highly relevant because of the lack of additional studies utilizing this specific source, but also because the data show, as reflected in newer studies with other sound sources, that the context of an exposure (novelty of the sound source, distance from the sound source and activity of the animals experiencing exposure, and whether the source is perceived as approaching or moving away, etc.) is as important, if not sometimes more important than the source level and frequency in terms of assessing reactions (see the Behavioral Response/Disturbance section above for discussion of more recent studies regarding context). Therefore, take estimates for SURTASS LFA sonar are likely conservative (though we analyze them here nonetheless), and takes that do occur will primarily be in the form of lower levels of take by Level B harassment.

(3) Efficacy of the Navy's Three-Part Mitigation Monitoring Program—Review of Final Comprehensive and Annual Reports, from August 2002 through December 2018, indicates that the HF/M3 active sonar system has proven to be the most effective of the mitigation monitoring measures to detect possible marine mammals in proximity to the transmitting LFA sonar array, and use of this system substantially increases the probability of detecting marine mammals within the mitigation zone (and beyond), providing a superior monitoring capability. Because the HF/M3 active sonar is able to monitor marine mammals out to an effective range of 2 to 2.5 km (1.2 to 1.5 mi; 1.1 to 1.3 nmi) from the vessel, it is unlikely that the SURTASS LFA operations would expose marine mammals to an SPL greater than about 174 dB re: 1 μPa at 1 m. Past results of the HF/M3 sonar system tests provide confirmation that the system has a demonstrated probability of single-ping detection of 95 percent or greater for single marine mammals that are 10 m (32.8 ft) in length or larger, and a probability approaching 100 percent for multiple pings of any sized marine mammal (see Chapter 5, section 5.4.3 of the SURTASS 2018 DSEIS/SOEIS for a summary of the effectiveness of the HF/M3 monitoring system). Lastly, as noted above, from the commencement of SURTASS LFA sonar use in 2002 through the present, neither operation of LFA sonar, nor operation of the T–AGOS vessels, has been associated with any mass or individual strandings of marine mammals. In addition, required monitoring reports indicate that there have been no apparent avoidance reactions observed, and no observed exposures to sound levels associated with Level A harassment takes due to SURTASS LFA sonar since its use began in 2002.

In examining the results of the mitigation monitoring procedures over the previous 17 years of SURTASS LFA activities, NMFS has concluded that the mitigation and monitoring measures for triggering shutdowns of the LFA sonar system have been implemented properly and have successfully minimized the potential adverse effects of SURTASS LFA sonar to marine mammals in the 2,000-yard LFA sonar mitigation zone around the vessel. This conclusion is further supported by documentation that no known mortality or injury to marine mammals has occurred over this period.

For reasons discussed in the Potential Effects of the Specified Activity on Marine Mammals and their Habitat section, NMFS anticipates that the effect of masking will be limited and the chances of an LFA sonar sound overlapping whale calls at levels that would interfere with their detection and recognition will be extremely low. Also as discussed in that section, NMFS does not expect any short- or long-term effects to marine mammal food resources from SURTASS LFA sonar training and testing activities. It is unlikely that the activities of the SURTASS LFA sonar vessels transmitting LFA sonar at any place in the action area over the course of a year would implicate all of the areas for a given species or stock in any year. It is anticipated that ample similar nearby habitat areas are available for species/stocks in the event that portions of preferred areas are ensonified. Implementation of the 2,000-yard LFA shutdown zone would ensure that most marine mammal takes are limited to lower-level Level B harassment. Further, in areas of known or likely biological importance for functions such as feeding, reproduction, etc., effects are mitigated by the coastal standoff and OBIAs.

As noted above, because of the nature, scale, and locations of SURTASS LFA sonar training and testing, there is no reason to expect meaningfully differential impacts on any particular species or stock that warrant additional discussion. However, we include the following to ensure understanding of the two cases where the percentages of stocks taken are notably higher compared to other stocks. As also noted previously, the modeling the Navy uses allows for the enumeration of instances of take—each representing an exposure above the Level B harassment threshold of a single marine mammal for some amount of time (likely relatively short) within a single day. The model does not predict how many of these instances for a given species or stock may occur as multiple, or repeated, takes to a single individual. Given the nature (small number of ships and relatively few hours across two ocean basins) and location (beyond coastal exclusion in open ocean, areas where species/stocks are not concentrated as much) of the activity, as well as the relatively small percentages of take compared to abundance for most stocks (the vast majority below 10 percent, 12 stocks in the 10–20 percent range, and a handful ranging from 20–67 percent) and the fact that takes of single stocks are expected across multiple regions, we expect that most individuals taken are taken only once in a year with some small subset taken perhaps a few times in the course of a year. However, two stocks have somewhat higher percentages that we note here. When estimated instances of take are compared to the estimated stock abundances, the percentages are 117 and 321 for the Western North Pacific stock of killer whales and the Western North Pacific stock of humpback whales, respectively. Acknowledging the uncertainty surrounding abundance estimates for the Navy's action area, it is still worth noting that these percentages are notably higher than others, and would suggest that some number of individuals are expected to be taken more than once. It indicates the possibility that some individuals are taken several times within a year, as the percentage exceeds 100%. For example, for the Western North Pacific humpback stock, the average number of takes would be three or more per individual. It is unlikely that takes would be exactly evenly distributed across all individuals and it is therefore more reasonable to assume that some number of individuals would be taken fewer than three times, while others would be taken on more than three days, and we assume up to twice that (*i.e.,* one individual could be taken on six days) for the sake of analysis. Even where one individual may be taken (by Level B harassment in the form of behavioral disturbance or a small degree of TTS) on up to six days within a year, given the nature of the activities, there is no reason to expect that these takes would be likely to occur on sequential days or that this magnitude of exposure within a year would be likely to result in impacts on reproduction or survival, especially given the implementation of mitigation to reduce the severity of impacts.

For the following summarized reasons, pulling in the supporting information both in this section and previous sections, NMFS has made a preliminary finding that the total authorized taking from SURTASS LFA sonar training and testing activities will have a negligible impact on the affected species or stocks based on following:

(1) The small number of SURTASS LFA sonar systems that would be operating world-wide (likely not in close proximity to one another) and the low total number of hours of operation planned across all vessels;

(2) The relatively low duty cycle, short training and testing events, and offshore nature of the SURTASS LFA sonar;

(3) The fact that marine mammals in unspecified migration corridors and open ocean concentrations would be adequately protected from exposure to sound levels that would result in injury, most TTS (and any accrued would be expected to be of a small degree), and more severe levels of behavioral disruption by the historical demonstrated effectiveness of the Navy's three-part monitoring program in detecting marine mammals and triggering shutdowns;

(4) Geographic restrictions requiring the SURTASS LFA sonar sound field not exceed 180 dB re 1μPa within 22 km of any shoreline, including islands, or at a distance of one km from the perimeter of an OBIA, thereby limiting the severity and number of behavioral disturbances; and

(5) The proven effectiveness of the required three-part monitoring and mitigation protocols.

In summary, 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, the authorized takes are not expected to adversely affect any species or stock through impacts on recruitment or survival. Therefore, NMFS preliminarily finds that the total authorized marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Subsistence Harvest of Marine Mammals

The Navy will not operate SURTASS LFA sonar in Arctic waters nor in the Gulf of Alaska, or off the Aleutian Island chain where subsistence uses of marine mammals protected under the MMPA occur. Therefore, there are no relevant subsistence uses of marine mammals implicated by this action. Therefore, there would be no impact on subsistence hunting, nor would SURTASS LFA sonar cause abandonment of any harvest/hunting locations, displace any subsistence users, or place physical barriers between marine mammals and the hunters. NMFS has preliminarily determined that the total taking affecting species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

There are 11 marine mammal species under NMFS' jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the central and western North Pacific and eastern Indian Oceans: The blue; fin; sei; Western North Pacific distinct population segment (DPS) of humpback; North Pacific right; Western North Pacific DPS of gray; sperm; and Main Hawaiian Islands Insular DPS of false killer, as well as the western DPS of the Steller sea lion; Hawaiian monk seal; and the Southern DPS of spotted seal.

On June 15, 2018, the Navy submitted a Biological Assessment to NMFS to initiate consultation under section 7 of the ESA for the 2019–2026 SURTASS LFA sonar training and testing activities. NMFS' proposed authorization for incidental take under section 101(a)(5)(A) of the MMPA is also a Federal agency action that requires consultation under section 7 of the ESA. NMFS and Navy will conclude consultation with NMFS' Office of Protected Resources, Interagency Cooperation Division prior to making a determination on the issuance of a final rule and LOAs.

The USFWS is responsible for regulating the take of the several marine mammal species including the polar bear, walrus, and dugong. The Navy has determined that none of these species occur in geographic areas that overlap with SURTASS LFA sonar activities and, therefore, that SURTASS LFA

sonar activities will have no effect on the endangered or threatened species or the critical habitat of ESA-listed species under the jurisdiction of the USFWS. Thus, no consultation with the USFWS pursuant to Section 7 of the ESA will occur.

Classification

This action does not contain any collection of information requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires a Federal agency to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that will be affected by this rulemaking and is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by LOAs issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy.

NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: February 21, 2019.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart X to part 218 to read as follows:

Subpart X—Taking and Importing of Marine Mammals; U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Training and Testing in the Central and Western North Pacific and Eastern Indian Oceans

Sec.
218.230 Specified activity, level of taking, and species/stocks.
218.231 Effective dates.
218.232 Permissible methods of taking.
218.233 Prohibitions.
218.234 Mitigation.
218.235 Requirements for monitoring.
218.236 Requirements for reporting.
218.237 Letter of Authorization.
218.238 Renewals and modifications of a Letter of Authorization.

Subpart X—Taking and Importing of Marine Mammals; U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Training and Testing in the Central and Western North Pacific and Eastern Indian Oceans

§ 218.230 Specified activity, level of taking, and species/stocks.

Regulations in this subpart apply to the U.S. Navy (Navy) for the taking of marine mammals that occurs incidental to the Navy's SURTASS LFA sonar training and testing activities under authority of the Secretary of the Navy within the central and western North Pacific and eastern Indian Oceans (SURTASS LFA Sonar Study Area) (Table 1 to § 218.230).

TABLE 1 TO § 218.230—SPECIES/STOCKS PROPOSED FOR AUTHORIZATION BY LEVEL B HARASSMENT FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR TRAINING AND TESTING ACTIVITIES

Species	Stock [1]
Antarctic minke whale	ANT.
Blue whale	CNP, NIND, WNP, SIND.
Bryde's whale	ECS, Hawaii, WNP, NIND, SIND.
Common minke whale	Hawaii, IND, WNP JW, WNP OE, YS.
Fin whale	ECS, Hawaii, IND, SIND, WNP.
Humpback whale	CNP stock and Hawaii DPS, WAU stock and DPS, WNP stock and DPS.
North Pacific right whale	WNP.
Omura's whale	NIND, SIND, WNP.
Sei whale	Hawaii, SIND, NP, NIND.
Western North Pacific gray whale	WNP stock and Western DPS.
Baird's beaked whale	WNP.
Blainville's beaked whale	Hawaii, WNP, IND.
Common bottlenose dolphin	4-Islands, Hawaii Island, Hawaii Pelagic, IA, IND, Japanese Coastal, Kauai/Niihau, Oahu, WNP Northern Offshore, WNP Southern Offshore, WAU.
Common dolphin	IND, WNP.
Cuvier's beaked whale	Hawaii, IND, SH, WNP.
Dall's porpoise	SOJ *dalli* type, WNP *dalli* ecotype, WNP *truei* ecotype.
Deraniyagala's beaked whale	IND, NP.
Dwarf sperm whale	Hawaii, IND, WNP.
False killer whale	Hawaii Pelagic, IA, IND, Main Hawaiian Islands Insular stock and DPS, Northwestern Hawaiian Islands, WNP.
Fraser's dolphin	CNP, Hawaii, IND, WNP.
Ginkgo-toothed beaked whale	IND, NP.
Harbor porpoise	WNP.
Hubbs' beaked whale	NP.
Indo-Pacific bottlenose dolphin	IND.

TABLE 1 TO § 218.230—SPECIES/STOCKS PROPOSED FOR AUTHORIZATION BY LEVEL B HARASSMENT FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR TRAINING AND TESTING ACTIVITIES—Continued

Species	Stock [1]
Killer whale	Hawaii, IND, WNP.
Kogia spp	WNP.
Longman's beaked whale	Hawaii, IND, WNP.
Melon-headed whale	Hawaiian Islands, IND, Kohala Resident, WNP.
Mesoplodon spp	WNP.
Northern right whale dolphin	NP.
Pacific white-sided dolphin	NP.
Pantropical spotted dolphin	4-Islands, Hawaii Island, Hawaiian Pelagic, IND, Oahu, WNP.
Pygmy killer whale	Hawaii, IND, WNP.
Pygmy sperm whale	Hawaii, IND, WNP.
Risso's dolphin	Hawaii, IA, WNP, IND.
Rough-toothed dolphin	Hawaii, IND, WNP.
Short-finned pilot whale	Hawaii, IND, WNP Northern Ecotype, WNP Southern Ecotype.
Southern bottlenose whale	IND.
Spade-toothed beaked whale	IND.
Sperm whale	Hawaii, NIND, NP, SIND.
Spinner dolphin	Hawaii Island, Hawaii Pelagic, IND, Kauai/Niihau, Kure/Midway Atoll, Oahu/4-Islands, Pearl and Hermes Reef, WNP.
Stejneger's beaked whale	WNP.
Striped dolphin	Hawaii, IND, Japanese Coastal, WNP Northern Offshore, WNP Southern Offshore.
Hawaiian monk seal	Hawaii.
Northern fur seal	Western Pacific.
Ribbon seal	NP.
Spotted seal	Alaska stock/Bering Sea DPS, Southern stock and DPS.
Steller sea lion	Western/Asian stock, Western DPS.

[1] ANT=Antarctic; CNP=Central North Pacific; NP=North Pacific; NIND=Northern Indian; SIND=Southern Indian; IND=Indian; WNP=Western North Pacific; ECS=East China Sea; WP=Western Pacific; SOJ=Sea of Japan; IA=Inshore Archipelago; WAU=Western Australia; YS=Yellow Sea; OE=Offshore Japan; OW=Nearshore Japan; JW=Sea of Japan/Minke; JE=Pacific coast of Japan; SH=Southern Hemisphere; DPS=distinct population segment.

§ 218.231 Effective dates.

Regulations in this subpart are effective from August 13, 2019, through August 12, 2026.

§ 218.232 Permissible methods of taking.

Under a Letter or Letters of Authorization (LOA) issued pursuant to § 216.106 of this chapter and § 218.237, the Holder of the LOA (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.230 by Level B harassment associated with SURTASS LFA sonar training and testing provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

§ 218.233 Prohibitions.

Notwithstanding takings contemplated in § 218.230 and authorized by a LOA issued under §§ 216.106 of this chapter and 218.237, no person in connection with the activities described in § 218.230 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 218.237;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than Level B harassment;

(d) Take any marine mammal specified in the LOA if NMFS makes a determination that such taking is having, or may have, more than a negligible impact on the species or stocks concerned; or

(e) Take a marine mammal specified in the LOA if NMFS determines such taking is having, or may have, an unmitigable adverse impact on availability of the species or stock for taking for subsistence uses.

§ 218.234 Mitigation.

When conducting activities identified in § 218.230, the mitigation measures described in this section and in any LOA issued under §§ 216.106 of this chapter and 218.237 must be implemented.

(a) *Personnel training*—Lookouts: The Navy will utilize one or more trained marine biologists qualified in conducting at-sea marine mammal visual monitoring to conduct at-sea marine mammal visual monitoring training and qualify designated ship personnel to conduct at-sea visual monitoring. Training will ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if they detect marine mammals and may be accomplished either in-person, or via video training.

(b) *General operating procedures.* (1) Prior to SURTASS LFA sonar activities, the Navy will promulgate executive guidance for the administration, execution, and compliance with the environmental regulations under these regulations and LOA.

(2) The Navy must not transmit the SURTASS LFA sonar signal at a frequency greater than 500 Hz.

(c) *2,000-yard LFA sonar mitigation/buffer zone; Suspension and Delay.* If a marine mammal is detected, through monitoring required under § 218.235, within or about to enter within 2,000 yards of the SURTASS LFA source (*i.e.,* the LFA mitigation/buffer zone), the Navy must immediately delay or suspend SURTASS LFA sonar transmissions.

(d) *Resumption of SURTASS LFA sonar transmissions.* (1) The Holder of a LOA may not resume SURTASS LFA sonar transmissions earlier than 15 minutes after:

(i) All marine mammals have left the area of the 2,000-yard LFA sonar mitigation zone; and

(ii) There is no further detection of any marine mammal within the 2,000-yard LFA sonar mitigation zone as determined by the visual, passive, and high frequency monitoring described in § 218.235.

(2) [Reserved]

(e) *Ramp-up procedures for the high-frequency marine mammal monitoring (HF/M3) sonar required under § 218.235.* (1) The Navy must ramp up the HF/M3 sonar power level beginning at a maximum source sound pressure level of 180 dB: re 1 μPa at 1 meter in 10-dB increments to operating levels over a period of no less than five minutes:

(i) At least 30 minutes prior to any SURTASS LFA sonar transmissions; and

(ii) Anytime after the HF/M3 source has been powered down for more than two minutes.

(2) The Navy must not increase the HF/M3 sound pressure level once a marine mammal is detected; ramp-up may resume once marine mammals are no longer detected.

(f) *Geographic restrictions on the SURTASS LFA sonar sound field.* (1) LFA sonar training and testing activities must be conducted such that:

(i) The received level of SURTASS LFA sonar transmissions will not exceed 180 dB within 22 km (12 nmi) from any emergent land, including offshore islands;

(ii) The received level of SURTASS LFA sonar transmissions will not exceed 180 dB re: 1 μPa (rms) at a distance less than 1 km (0.5 nmi) seaward of the outer perimeter of any Offshore Biologically Important Area (OBIA) designated in § 218.234(f)(2), or subsequently identified through the Adaptive Management process specified in § 218.241, during the period specified. The boundaries and periods of such OBIAs will be kept on file in NMFS' Office of Protected Resources and on its website at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

(iii) No activities with the SURTASS LFA system will occur within territorial seas of foreign nations, which are areas from 0 up to 12 nmi from shore, depending on the distance that individual nations claim; and

(iv) No activities with the SURTASS LFA system will occur within Hawaii state waters (out to 3 nmi) or in the waters of Penguin Bank and ensonification of Hawaii state waters will not be at levels above 145 dB.

(2) Offshore Biologically Important Areas (OBIAs) for marine mammals (with specified periods) for SURTASS LFA sonar training and testing activities include the following (Table 1 to paragraph (f)(2):

TABLE 1 TO PARAGRAPH (f)(2)—OFFSHORE BIOLOGICALLY IMPORTANT AREAS (OBIA)

[Note: This table will be updated to include a finalized list of OBIAs for the Final Rule after continued coordination with Navy and review of information received from the Proposed Rule to finalize consideration of the candidate OBIAs.]

Name of area	Location of area	Months of importance
Penguin Bank, Hawaiian Islands Humpback Whale NMS.	North-Central Pacific Ocean	November through April, annually.
Northern Bay of Bengal and Head of Swatch-of-No-Ground (SoNG).	Bay of Bengal/Northern Indian Ocean	Year-round.
Offshore Sri Lanka	North-Central Indian Ocean	December through April, annually.
Camden Sound/Kimberly Region	Southeast Indian Ocean; northwestern Australia.	June through September, annually.

(g) *Minimization of additional harm to live-stranded (or milling) mammals.* The Navy must consult the Notification and Reporting Plan, which sets out the requirements for when live stranded marine mammals are reported in the Study Area. The Stranding and Notification Plan is available at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0.*

§ 218.235 Requirements for monitoring.

(a) The Navy must:

(1) Conduct visual monitoring from the ship's bridge during all daylight hours (30 minutes before sunrise until 30 minutes after sunset). During training and testing activities that employ SURTASS LFA sonar in the active mode, the SURTASS vessels must have lookouts to maintain a topside watch with standard binoculars (7x) and with the naked eye.

(2) Use the passive SURTASS sonar component to detect vocalizing marine mammals; and

(3) Use the HF/M3 sonar to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array, subject to the ramp-up requirements in § 216.234(e) of this chapter.

(b) Monitoring under paragraph (a) of this section must:

(1) Commence at least 30 minutes before the first SURTASS LFA sonar training and testing transmission;

(2) Continue between transmission pings; and

(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar training and testing transmission, or, if marine mammals are exhibiting unusual changes in behavioral patterns, for a period of time until behavior patterns return to normal or conditions prevent continued observations.

(c) The Navy must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in these regulations and LOA issued under §§ 216.106 of this chapter and 218.237.

(d) The Navy must continue to assess data from the Marine Mammal Monitoring Program and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified after appropriate security reviews will be made publically available.

(e) The Navy must collect ambient noise data and will explore the feasibility of declassifying and archiving the ambient noise data for incorporation into appropriate ocean noise budget efforts.

(f) The Navy must conduct all monitoring required under LOAs.

§ 218.236 Requirements for reporting.

(a) The Navy must submit classified and unclassified annual mission reports to the Director, Office of Protected Resources, NMFS, no later than 60 days after the end of each year covered by the LOA beginning on the date of effectiveness of a LOA. Each annual mission report will include a summary of all active-mode missions completed during that year. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of each vessel during each mission;

(2) Information on sonar transmissions during each mission;

(3) Results of the marine mammal monitoring program specified in the LOA; and

(4) Estimates of the percentages of marine mammal species and stocks affected (both for the year and cumulatively for each successive year) covered by the LOA.

(b) The seventh annual report must be prepared as a final comprehensive report, which will include information for the final year as well as the prior six years of activities under the rule. This final comprehensive report must also contain an unclassified analysis of new passive sonar technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar, and be submitted to the Director, Office of Protected Resources, NMFS as described in this paragraph (b).

(c) The Navy will continue to assess the data collected by its undersea arrays and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified after appropriate security reviews will be made publically available.

(d) The Navy must consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements for when dead, injured, or live stranded marine mammals are reported in the Study Area. The Stranding and Notification Plan is available at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0.*

§ 218.237 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Navy must apply for and obtain a Letter of Authorization (LOA).

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA (excluding changes made pursuant to the adaptive management provision of § 218.239), the Navy must apply for and obtain a modification of the LOA as described in § 218.238.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.,* mitigation); and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA will be published in the **Federal Register** within thirty days of a determination.

§ 218.238 Renewals and modifications of a Letter of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 218.237 for the activity identified in § 218.230 may be renewed or modified upon request by the applicant, provided that:

(1) The planned specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or stock or years), NMFS may publish a notice of planned LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 218.237 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from the Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of planned LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 218.237, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 2019

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
March 1	Mar 18	Mar 22	Apr 1	Apr 5	Apr 15	Apr 30	May 30
March 4	Mar 19	Mar 25	Apr 3	Apr 8	Apr 18	May 3	Jun 3
March 5	Mar 20	Mar 26	Apr 4	Apr 9	Apr 19	May 6	Jun 3
March 6	Mar 21	Mar 27	Apr 5	Apr 10	Apr 22	May 6	Jun 4
March 7	Mar 22	Mar 28	Apr 8	Apr 11	Apr 22	May 6	Jun 5
March 8	Mar 25	Mar 29	Apr 8	Apr 12	Apr 22	May 7	Jun 6
March 11	Mar 26	Apr 1	Apr 10	Apr 15	Apr 25	May 10	Jun 10
March 12	Mar 27	Apr 2	Apr 11	Apr 16	Apr 26	May 13	Jun 10
March 13	Mar 28	Apr 3	Apr 12	Apr 17	Apr 29	May 13	Jun 11
March 14	Mar 29	Apr 4	Apr 15	Apr 18	Apr 29	May 13	Jun 12
March 15	Apr 1	Apr 5	Apr 15	Apr 19	Apr 29	May 14	Jun 13
March 18	Apr 2	Apr 8	Apr 17	Apr 22	May 2	May 17	Jun 17
March 19	Apr 3	Apr 9	Apr 18	Apr 23	May 3	May 20	Jun 17
March 20	Apr 4	Apr 10	Apr 19	Apr 24	May 6	May 20	Jun 18
March 21	Apr 5	Apr 11	Apr 22	Apr 25	May 6	May 20	Jun 19
March 22	Apr 8	Apr 12	Apr 22	Apr 26	May 6	May 21	Jun 20
March 25	Apr 9	Apr 15	Apr 24	Apr 29	May 9	May 24	Jun 24
March 26	Apr 10	Apr 16	Apr 25	Apr 30	May 10	May 28	Jun 24
March 27	Apr 11	Apr 17	Apr 26	May 1	May 13	May 28	Jun 25
March 28	Apr 12	Apr 18	Apr 29	May 2	May 13	May 28	Jun 26
March 29	Apr 15	Apr 19	Apr 29	May 3	May 13	May 28	Jun 27