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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0399; Product Identifier 2018–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737 series airplanes, except for Model 737–100, —200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by reports of separation of the lower aft wing-to-body fairing panel 194E (''fairing panel 194E'') during flight, due to worn or damaged nutplates on the support structure. This proposed AD would require repetitive inspections of fairing panel 194E, wheel well panel 193D, and support structure for discrepancies, and related investigative and corrective actions if necessary. This proposed AD would also require rework of the panels and support structure, which would terminate the repetitive inspections. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 5, 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–2019–0399.

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–2019–0399; 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 is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3527; email: *alan.pohl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0399; Product Identifier 2018–NM–149–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The agency will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

Discussion

The FAA has received several reports of separation of the lower aft wing-to-body fairing panel 194E during flight. In two of these reports, damage from the separation of that panel was also found on an adjacent fairing panel. In another report, the panel was found loose. The airplanes with loose or missing panels had accumulated between 1,270 and 43,200 total flight hours, and between 550 and 15,800 total flight cycles. The FAA determined that the nutplates common to the forward edge of the panel could become worn or damaged. In addition, worn or damaged nutplates on the support structure for the wheel well panel 193D, which is adjacent to the 194E fairing panel, may also be a contributing factor to the loss of the 194E fairing panel. This condition, if not addressed, could result in separation of fairing panel 194E.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Service Bulletin 737–53–1307, dated January 12, 2012. This service information describes procedures for repetitive inspections of fairing panel 194E, wheel well panel 193D, and support structure for discrepancies (including incorrect torque at the fasteners and worn and damaged nutplates and fastener holes) and corrective actions (including repair and replacement of nutplates and fasteners). This service information also describes procedures for rework of the panels and support structure, including related investigative actions (general visual inspection of the panel and support structure for damage) and repair, which together would eliminate the need for the repetitive inspections.

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

The FAA is proposing this AD because the agency 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 accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information,'' and except for any differences identified as exceptions in the regulatory text of this proposed AD.

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–2019–0399.

The phrase ''related investigative actions'' is used in this proposed AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

The effectivity of Boeing Service Bulletin 737–53–1307, dated January 12, 2012, is limited to Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, line numbers 1 through 3532 inclusive. However, the applicability of this proposed AD includes all Model 737 airplanes except for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The FAA has determined, as has the design approval holder, that affected parts can be installed on future deliveries. Because the affected parts are rotable, the FAA has 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.

Airplanes from line number 3533 through any airplane with an original airworthiness certificate or an original export certificate of airworthiness dated on or before the effective date of this AD would be subject to the initial inspection requirement of this proposed AD, but the inspection would not be required to be repeated if the airplane can be demonstrated to have the post-reworked configuration of Boeing Service Bulletin 737–53–1307, dated January 12, 2012, as specified in paragraph (h) of this AD. (Note that the ''Parts Installation Limitation'' specified in paragraph (i) of this AD would still apply.)

Costs of Compliance

The FAA estimates that this proposed AD would affect 983 airplanes of U.S. registry. The agency estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle	Up to $668,440 per inspection cycle.
Rework	25 work-hours × $85 per hour = $2,125.	0	$2,125	Up to $2,088,875.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition repairs 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.

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The 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–2019–0399; Product Identifier 2018–NM–149–AD.

(a) Comments Due Date

The FAA must receive comments by August 5, 2019.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of separation of lower aft wing-to-body fairing panel 194E (''fairing panel 194E'') during flight, due to worn or damaged nutplates on the 193D wheel well panel and support structure. The FAA is issuing this AD to address separation of fairing panel 194E.

(f) Compliance

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

(g) Repetitive Inspections and Corrective Actions

(1) For airplanes with an original airworthiness certificate or an original export certificate of airworthiness dated on or before the effective date of this AD: Within 24 months after the effective date of this AD, do a general visual inspection for discrepancies of fairing panel 194E, wheel well panel 193D, and support structure, and do all applicable related investigative and corrective actions, in accordance with Part 1 and Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1307, dated January 12, 2012. All applicable related investigative and corrective actions must be done before further flight. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles.

(2) For airplanes having line numbers 3533 and subsequent with an original airworthiness certificate or an original export certificate of airworthiness dated on or before the effective date of this AD: If the initial inspection required by paragraph (g)(1) shows that fairing panel 194E, wheel well panel 193D, and the support structure have the number and type of attachments specified in the post-reworked configuration of Boeing Service Bulletin 737–53–1307, dated January 12, 2012, then the repetitive inspections required by paragraph (g)(1) of this AD are terminated. The requirements of paragraph (i) of this AD continue to apply.

(h) Terminating Action

For airplanes with an original airworthiness certificate or an original export certificate of airworthiness dated on or before the effective date of this AD: Within 72 months after the effective date of this AD, do the actions required by paragraph (h)(1) or (h)(2) of this AD, as applicable. Accomplishing the actions in paragraph (h)(1) or (h)(2) of this AD terminates the repetitive inspections required by paragraph (g)(1) of this AD. The requirements of paragraph (i) of this AD continue to apply.

(1) Rework fairing panel 194E, wheel well panel 193D, and the support structure, including accomplishment of all applicable related investigative actions and repair, in accordance with Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1307, dated January 12, 2012. All applicable related investigative actions and repairs must be done before further flight.

(2) Verify that fairing panel 194E, wheel well panel 193D, and the support structure have the number and type of attachments specified in the post-reworked configuration of Boeing Service Bulletin 737–53–1307, dated January 12, 2012.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install a fairing panel 194E on any airplane identified in paragraph (c) of this AD, unless fairing panel 194E, wheel well panel 193D, and the support structure have the number and type of attachments specified in the post-reworked configuration of Boeing Service Bulletin 737–53–1307, dated January 12, 2012.

(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 Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3527; email: *alan.pohl@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 service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on June 14, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–13020 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0439; Product Identifier 2019–NM–037–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2012–22–18, which applies to all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes. AD 2012–22–18 requires repetitive inspections of the three inner acoustic panels of both engine air intake cowls to detect disbonding, and corrective actions if necessary. Since we issued AD 2012–22–18, we have received additional reports of engine air inlet cowl collapse. This proposed AD would retain the requirements of AD 2012–22–18 with a reduced compliance time and reduced repetitive inspection intervals. This proposed AD would also provide for an optional modification that is terminating action for the repetitive inspections. These actions are specified in a European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 5, 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 the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material 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 in the AD docket on the internet at *http://www.regulations.gov.*

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–2019–0439; 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 is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

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–2019–0439; Product Identifier 2019–NM–037–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

We issued AD 2012–22–18, Amendment 39–17256 (77 FR 70366, November 26, 2012) (''AD 2012–22–18''), for all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes. AD 2012–22–18 requires repetitive inspections of the three inner acoustic panels of both engine air intake cowls to detect disbonding, and corrective actions if necessary. AD 2012–22–18 resulted from reports of extensive damage to engine air intake cowls as a result of acoustic panel detachment. We issued AD 2012–22–18 to address disbonding, which could result in detachment of the engine air intake cowl from the engine leading to ingestion of parts, which could cause failure of the engine, and possible injury to persons on the ground.

Actions Since AD 2012–22–18 Was Issued

Since we issued AD 2012–22–18, we have received additional reports of engine air inlet cowl collapse and made a determination that there should be a reduction of the existing compliance time and repetitive inspection intervals required by AD 2012–22–18.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0042, dated February 27, 2019 (''EASA AD 2019–0042'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–243, A330–243F, A330–341, A330–342 and A330–343 airplanes. The MCAI states:

> Occurrences were reported on A330 aeroplanes fitted with Rolls-Royce Trent 700 engines, where the air inlet cowl was found with extensive damage, as a result of acoustic panel collapse. The technical investigation results revealed that these occurrences were caused by panel disbonding.
>
> This condition, if not detected and corrected, could lead to in-flight detachment of an air inlet cowl acoustic panel, possibly resulting in damage to the aeroplane, and/or in damage to the engine by ingestion of parts, and/or injury to persons on the ground.
>
> To initially address this potential unsafe condition, Airbus published the inspection [service bulletin] SB (original issue up to Revision 03), to provide instructions for [special detailed inspection] SDI of the three acoustic panels of air inlet cowl. Consequently, EASA issued AD 2011–0173 [which corresponds to FAA AD 2012–22–18] to require repetitive SDI of these air inlet cowl acoustic panels on both engines.
>
> Since that [EASA] AD was issued, Airbus developed mod 202395, installation of improved inner acoustic panels, and published the modification SB, which constitutes an optional terminating action for the SDI. Consequently, EASA AD 2011–0173 was revised to introduce this optional terminating action.
>
> Since that revised [EASA] AD was issued, new events of Rolls-Royce Trent 700 engines air inlet cowl collapse have been reported. These events only occurred on pre-mod 202395 engine air inlet cowls. Prompted by these findings, Airbus performed new calculations of the SDI threshold/interval values and those of the Acceptable/Repairable Damage Limits, leading to an amended inspection programme.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2011–0173R1, which is superseded, and requires the SDI of affected parts at amended threshold(s) and interval(s), and, depending on findings, repair or replacement of affected parts. This [EASA] AD also allows a post-mod aeroplane to be modified, either partially or completely, to pre-mod configuration [which terminates the need for the repetitive inspections].

The initial compliance time for the special detailed inspection is within 12 months after an installation or inspection, or 6 months after the effective date of the AD, whichever occurs later; but not to exceed 24 months since the last inspection. The compliance times for the corrective action are before further flight and before 10 flight cycles since the last inspection, depending on the condition. The repetitive inspection interval is 12 months.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2012–22–18, this proposed AD would retain all of the requirements of AD 2012–22–18, except the existing compliance time and repetitive inspection intervals are reduced. Those requirements are referenced in EASA AD 2019–0042, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0042 describes procedures for repetitive inspections of engine air inlet cowls having certain part numbers, repair or replacement of any engine air inlet cowl that has disbonding, and an optional modification that terminates the need for the repetitive inspections. This material is reasonably available because the interested parties have access to it through their normal course of business

or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0042 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019–0042 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2019–0042, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in EASA AD 2019–0042 that is required for compliance with EASA AD 2019–0042 will be available on the internet *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0439 after the FAA final rule is published.

Costs of Compliance

We estimate that this proposed AD affects 47 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
Retained actions from AD 2012–22–18	Up to 20 work-hours × $85 per hour = Up to $1,700.	$0	$1,700	Up to $79,900.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
Up to 154 work hours × $85 per hour = Up to $13,090	(*)	Up to $13,090.*

* We have received no definitive data on the parts costs for the optional actions.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 34 work-hours × $85 per hour = Up to $2,890	(*)	Up to $2,890.*

* We have received no definitive data on the parts costs for the on-condition actions.

The new requirements of this proposed AD add no additional economic burden. However, the optional modification, if done, would result in additional costs as specified in the ''Estimate costs for optional actions'' table.

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 removing Airworthiness Directive (AD) 2012–22–18, Amendment 39–17256 (77 FR 70366, November 26, 2012), and adding the following new AD:

Airbus SAS: Docket No. FAA–2019–0439; Product Identifier 2019–NM–037–AD.

(a) Comments Due Date

We must receive comments by August 5, 2019.

(b) Affected ADs

This AD replaces 2012–22–18, Amendment 39–17256 (77 FR 70366, November 26, 2012) (''AD 2012–22–18'').

(c) Applicability

This AD applies to all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by reports of extensive damage to engine air intake cowls as a result of acoustic panel collapse. We are issuing this AD to address disbonding, which could result in detachment of the engine air intake cowl from the engine, leading to ingestion of parts, which could cause failure of the engine, and possible injury to persons on the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Aviation Safety Agency (EASA) AD 2019–0042, dated February 27, 2019 (''EASA AD 2019–0042'').

(h) Exceptions to EASA AD 2019–0042

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0042 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0042 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0042 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0042 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2019–0042, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this EASA AD 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. EASA AD 2019–0042 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0439.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

Issued in Des Moines, Washington, on June 10, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–12877 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0431; Airspace Docket No. 19–ASO–9]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airway V–159 in the Vicinity of Hamilton, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify VHF Omnidirectional Range (VOR) Federal airway V–159 due to the planned decommissioning of the Hamilton, AL, VORTAC navigation aid which provides navigation guidance for a segment of the route. The Hamilton VORTAC is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before August 5, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of

Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0431; Airspace Docket No. 19–ASO–9 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

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 *http://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: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

Comments Invited

Interested parties are invited to participate in 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 (FAA Docket No. FAA–2019–0431; Airspace Docket No. 19–ASO–9) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov.*

Commenters 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–2019–0431; Airspace Docket No. 19–ASO–9''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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 **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 during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., 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 proposed rule. 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 proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the description of VOR Federal airway V–159 due to the planned decommissioning of the Hamilton, AL, VORTAC. The proposed route change is described below.

V–159: V–159 currently extends between the Virginia Key, FL, VOR/DME and the Huron, SD, VORTAC. The FAA proposes to remove the airway segment between the Vulcan, AL, VORTAC, and the Holly Springs, MS, VORTAC due to the planned decommissioning of the Hamilton, AL, VORTAC which provides navigation guidance between Vulcan and Holly Springs. As amended, V–159 would consist of two sections. The first section would extend between Virginia Key, FL, and Vulcan, AL, as currently charted. This would be followed by a gap in the route between Vulcan, AL, and Holly Springs, MS. The second section would extend between Holly Springs, MS, and Huron, SD, as currently charted.

A low altitude area navigation (RNAV) route (T-route) is being developed to replace the airway section proposed for removal. In the interim, alternative routing would be available via airway V–7 between Vulcan, AL, and the Muscle Shoals, AL, VORTAC; then airway V–54 between Muscle Shoals and Holly Springs.

Domestic VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airways listed in this document would be subsequently published 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 Department of Transportation (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 will 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–159 [Amended]

From Virginia Key, FL: INT Virginia Key 344° and Treasure, FL, 178° radials; Treasure; INT Treasure 318° and Orlando, FL, 140° radials; Orlando; Ocala, FL; Cross City, FL; Greenville, FL; Pecan, GA; Eufaula, AL; Tuskegee, AL; to Vulcan, AL. From Holly Springs, MS; Gilmore, AR; Walnut Ridge, AR; Dogwood, MO; Springfield, MO; Napoleon, MO; INT Napoleon 005° and St. Joseph, MO, 122° radials; St. Joseph; Omaha, NE; Sioux City, IA; Yankton, SD; Mitchell, SD; to Huron, SD.

* * * * *

Issued in Washington, DC, on June 12, 2019.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2019–12892 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0890; Airspace Docket No. 16–ACE–10]

RIN 2120–AA66

Proposed Establishment of Class D and E Airspace; Wichita, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D airspace and Class E airspace designated as surface area, at Beech Factory Airport, Wichita, KS. The FAA is proposing this action for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before August 5, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket NO. FAA–2017–0890; Airspace Docket No. 16–ACE–10, at the beginning of your comments. You may also submit 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 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 *http://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 would establish Class D and Class E airspace designated as a surface area at Beech Factory Airport, Wichita, KS, to support instrument flight rules (IFR) operations at the airport.

Comments Invited

Interested parties are invited to participate in 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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0890/Airspace Docket No. 16–ACE–10.'' 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 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 the 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 during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

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 3, 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 proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Establishing Class D airspace at Beech Factory Airport, Wichita, KS, extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of Beech Factory Airport, excluding that airspace within the McConnell AFB, Class D airspace area, and excluding that airspace north of a line extending from lat. 37°43′07″ N, long. 97°17′51″ W to lat. 37°43′47″ N, long. 97°08′21″ W, within the Colonel James Jabara Airport, Wichita, KS.

Establishing Class E airspace area designated as surface area at Beech Factory Airport, Wichita, KS, extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of Beech Factory Airport, excluding that airspace within the McConnell AFB, Class D airspace area, and excluding that airspace north of a line extending from lat. 37°43′07″ N, long. 97°17′51″ W to lat. 37°43′47″ N, long. 97°08′21″ W, within the Colonel James Jabara Airport, Wichita, KS.

Controlled airspace is necessary for the safety and management of Standard Instrument Approach Procedures (SIAPs) for IFR operations at this airport.

Class D and E airspace designations are published in paragraph 5000 and 6002, respectively, of FAA Order 7400.11C, dated August 3, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''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

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 3, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D Wichita, Beech Factory Airport, KS [New]

Wichita Beech Factory Airport, KS
(Lat. 37°41′38″ N, long. 097°12′54″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of Beech Factory Airport, excluding that airspace within the McConnell AFB, KS, Class D airspace area, and excluding that portion of Colonel James Jabara Airport, Class E airspace area north of a line from lat. 37°43′07″ N, long. 97°17′51″ W to lat. 37°43′47″ N, long. 97°08′21″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ACE KS E2 Wichita, Beech Factory Airport, KS [NEW]

Wichita Beech Factory Airport, KS
(Lat. 37°41′38″ N, long. 097°12′54″ W)

That airspace within a 4.2-mile radius of Beech Factory Airport, excluding that airspace within the McConnell AFB, KS, Class D airspace area, and that portion of Colonel James Jabara Airport, Class E airspace area north of a line from lat. 37°43′07″ N, long. 97°17′51″ W to lat. 37°43′47″ N, long. 97°08′21″ W. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in Fort Worth, Texas, on June 11, 2019.

John Witucki,

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

[FR Doc. 2019–12898 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0390; Airspace Docket No. 19–ANM–9]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Lander, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Hunt Field, Lander, WY, to accommodate new area navigation (RNAV) procedures at the airport. This action would ensure the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before August 5, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0390; Airspace Docket No. 19–ANM–9, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

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: Rick Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in 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 and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0390; Airspace Docket No. 19–ANM–09''. 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 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 the 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 during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

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 proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface of the earth within a 7-mile radius of Hunt Field, Lander, WY, from the point that the 309° radial intersects the 7-mile radius clockwise to the point that the 140° radial intersects the 7-mile radius and that airspace 2 miles each side of the 50° radial from the 7-mile radius to 8.2 miles from the airport.

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 71.1. The 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 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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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.

* * * * *

ANM WY E5 Lander, WY [New]

Hunt Field, WY
(Lat. 42°48′55″ N, long. 108°43′43″ W)

That airspace extending upward from 700 feet above the surface of the earth within a 7-mile radius of Hunt Field, from the point that the 309° radial intersects the 7-mile radius clockwise to the point that the 140° radial intersects the 7-mile radius and that airspace 2 miles each side of the 50° radial from the 7-mile radius to 8.2 miles from the airport.

Issued in Seattle, Washington, on June 12, 2019.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–12893 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0450; Airspace Docket No. 19–ASO–12]

RIN 2120–AA66

Proposed Amendment of the Class E Airspace; Ashland, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Ashland Regional Airport, Ashland, KY. The FAA is proposing this action as the result of the revision to the instrument procedures at the airport, which require additional airspace. The name of the airport would also be updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before August 5, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2019–0450; Airspace Docket No. 19–ASO–12, at the beginning of your comments. You may also submit 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 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 *http://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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in 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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to

Docket No. FAA–2019–0450/Airspace Docket No. 19–ASO–12.'' 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 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 the 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 during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

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 proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface at Ashland Regional Airport, Ashland, KY, by adding an extension 2 miles either side of the 098° bearing from the airport extending from the 6.5-mile radius to 10.4 miles east of the airport; adding an extension 2 miles either side of the 278° bearing from the airport extending from the 6.5-mile radius to 10.5 miles west of the airport; removing the exclusionary language, as it is no longer required; and would update the name of the Ashland Regional Airport (formerly Ashland-Boyd County Airport) to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the amendment of the instrument procedures at the airport, which require additional airspace to comply with FAA Order, 7400.2M, Procedures for Handling Airspace.

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 71.1. The 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 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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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.

* * * * *

ASO KY E5 Ashland, KY [Amended]

Ashland Regional Airport, KY
(Lat. 38°33′16″ N, long. 82°44′17″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ashland Regional Airport; and extending 2 miles either side of the 098° bearing from the airport extending from the 6.5-mile radius to 10.4 miles east of the airport; and extending 2 miles either side of the 278° bearing from the airport extending from the 6.5-mile radius to 10.5 miles west of the airport.

Issued in Fort Worth, Texas, on June 12, 2019.

John Witucki,

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

[FR Doc. 2019–12901 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0344; Airspace Docket No. 19–ASW–7]

RIN 2120–AA66

Proposed Amendment of the Class D Airspace; New Iberia, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D airspace at Acadiana Regional Airport, New Iberia, LA. The FAA is proposing this action as the result of the decommissioning of the ACADI non-directional radio beacon, (NDB). This would enhance the safety

and management of standard instrument approach procedure for instrument flight rules (IFR), operations at this airport.

DATES: Comments must be received on or before August 5, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2019–0344; Airspace Docket No. 19–ASW–7, at the beginning of your comments. You may also submit 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 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 *http://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 would amend the Class D airspace at Acadiana Regional Airport, New Iberia, LA, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in 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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0344/Airspace Docket No. 19–ASW–7.'' 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 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 the 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 during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

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 proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class D airspace at Acadiana Regional Airport, New Iberia, LA, to within a 4.2-mile radius (reduced from a 4.4-mile radius); adding an extension within 1-mile each side of the 168° bearing from the airport extending from the 4.2-mile radius to 4.5-miles south of the airport; removing the city associated with the airport from the legal description to comply with FAA Order 7400.2M, Procedures for Handling Airspace Matters; and would make an editorial change replacing the outdated term ''Airport/Facility Directory'' with ''Chart Supplement''.

This action is the result of an airspace review caused by the decommissioning of the ACADI NDB, which provided navigation information for the instrument procedures at this airport.

Class D airspace designations are published in paragraph 5000 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 airspace designations listed in this document will be published subsequently in the Order.

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 will only affect air

traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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 5000 Class D Airspace.

* * * * *

ASW LA D New Iberia, LA [Amended]

Acadiana Regional Airport, LA
(Lat. 30°02′16″ N, long. 91°53′02″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Acadiana Regional Airport, and within 1-mile each side of the 168° bearing from the airport extending from the 4.2-mile radius to 4.5 miles south of the airport, excluding the Lafayette Regional Airport, LA, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in Fort Worth, Texas, on June 12, 2019.

John Witucki,

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

[FR Doc. 2019–12899 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2019–0003; Notice No. 181]

RIN: 1513–AC52

Proposed Establishment of the Tualatin Hills and Laurelwood District Viticultural Areas

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 144,000-acre ''Tualatin Hills'' viticultural area in portions of Multnomah and Washington Counties, in Oregon. TTB is also proposing to establish the approximately 33,600-acre ''Laurelwood District'' viticultural area in portions of Washington and Yamhill Counties, in Oregon. TTB is proposing these two viticultural areas simultaneously because, if established, a small portion of their boundaries would be contiguous. Both proposed viticultural areas are located entirely within the existing Willamette Valley viticultural area, and the proposed Laurelwood District viticultural area is also located entirely within the existing Chehalem Mountains viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by August 19, 2019.

ADDRESSES: Please send your comments on this notice to one of the following addresses:

- *Internet: http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2019–0003 at ''*Regulations.gov*,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing or view or obtain copies of the petition and supporting materials.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013, (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name

and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes the standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon;
- An explanation of the proposed AVA is sufficiently distinct from an existing AVA so as to warrant separate recognition, if the proposed AVA is to be established within, or overlapping, an existing AVA; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Tualatin Hills Petition

TTB received a petition from Rudolf Marchesi, president of Montinore Estate, Alfredo Apolloni, owner and winemaker of Apolloni Vineyards, and Mike Kuenz, general manager of David Hill Vineyard and Winery, on behalf of themselves and other local grape growers and vintners, proposing the establishment of the ''Tualatin Hills'' AVA.

The proposed Tualatin Hills AVA is located west of the city of Portland and lies entirely within the established Willamette Valley AVA (27 CFR 9.90). If established, the proposed Tualatin Hills AVA would also share a small portion of its southeastern boundary with a small portion of the northwestern boundary of the proposed Laurelwood District AVA. The proposed AVA covers approximately 144,000 acres and contains 21 wineries and 33 commercially-producing vineyards that cover a total of approximately 860.5 acres.

The distinguishing features of the proposed Tualatin Hills AVA are its soils, elevation, and climate. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this document are from the petition for the proposed Tualatin Hills AVA and its supporting exhibits.

Name Evidence

The proposed Tualatin Hills AVA is a region of upland hills within the Tualatin River watershed in northwestern Oregon. The petition provided evidence that the region is commonly referred to as the ''Tualatin Hills.'' For example, a hiking trail in the region is called the Tualatin Hills Nature Park Loop. The petition also states that the Tualatin Hills Nature Park, the Tualatin Hills Parks and Recreation District, and Tualatin Hills Christian Church serve the proposed AVA. Finally, several sporting organizations serving the region use the name ''Tualatin Hills,'' including the Tualatin Hills Junior Soccer League, the Tualatin Hills Barracudas adult swim team, the Tualatin Hills Water Polo Club, the former Tualatin Hills Tennis Center, and the Tualatin Hills Dive Club.

Boundary Evidence

The proposed Tualatin Hills AVA is a roughly C-shaped region of hills west of Portland, Oregon, in the hills of the Tualatin River watershed. According to the petition, the proposed AVA's boundaries are drawn to separate the proposed AVA from regions with different soils, elevations, and climate. The proposed northern and western boundaries follow the 1,000-foot elevation contour and separate the proposed AVA from the higher elevations within the Coast Range. The proposed northern and western boundaries also coincide with the boundary of the established Willamette Valley AVA. The southern and southeastern boundaries are drawn to exclude the established Chehalem Mountains AVA (27 CFR 9.205), which contains higher elevations and a greater concentration of sedimentary, alluvial, and volcanic soils than the proposed AVA. The southeastern boundary also separates the proposed Tualatin Hills AVA from the proposed Laurelwood District AVA. The eastern boundary separates the proposed Tualatin Hills AVA from the heavily urbanized regions of metro Portland. Additionally, the region east of the proposed AVA has generally lower elevations and flatter topography, as well as deep alluvial soils that are different from the soils of the proposed AVA.

Distinguishing Features

The distinguishing features of the proposed Tualatin Hills AVA are its soils, elevation, and climate.

Soils

The petition states that the soils of the proposed Tualatin Hills AVA are primarily Laurelwood soils and similar associated types, with almost no exposed volcanic or marine sedimentary soil types.[1] The Laurelwood and associated soils are unique to the northwestern portion of the established Willamette Valley AVA, which includes the proposed Tualatin Hills AVA. According to the petition, the only place outside the proposed AVA where Laurelwood soils occur is on the northeast-facing slopes of the established Chehalem Mountains AVA, within the proposed Laurelwood District AVA. However, the petition notes that the Laurelwood soils within the Chehalem Mountains AVA are frequently mixed with volcanic, sedimentary, and alluvial soils.

Laurelwood soils are formed from weathered basalt combined with windblown silt known as loess. The soils are fine, silty soils with no rocks and generally have low levels of organic material and a high clay content. The soils are considered to be moderately fertile and, therefore, do not promote overly vigorous vine growth. The soils reach depths of up to 100 feet. The depth of the soils, combined with the high clay content, reduces the need for irrigation in most vineyards within the proposed AVA.

Laurelwood soils also contain small, round iron manganese structures called ''pisolites,'' which range in size from a grain of sand to a pea. These pisolites are found only in Laurelwood soils and, according to the petition, affect the taste and smell of wines. For example, the

[1] *See* Petition to create the Laurelwood District American Viticultural Area, Appendices 2–3 and Figure 2, available for review in the docket for this rulemaking at ''*Regulations.gov*'' (These materials contain analyses of Laurelwood soil).

petition asserts that the pisolites contribute to the rose-petal aroma of Pinot Noir wines made from grapes grown in the Laurelwood soils of the proposed AVA.

To the north of the proposed Tualatin Hills AVA, the soils formed primarily from volcanic material from eruptions near the Oregon-Washington-Idaho border between 6 and 17 million years ago and contain very little loess and no Laurelwood series soils. West of the proposed AVA, the soils are primarily Coastal sediment soils originating from volcanic soils and marine uplifted soils that formed 50 million years ago. To the south of the proposed AVA within the established Chehalem Mountains AVA, the soils are also formed primarily from marine sediments, although the soils are sometimes striated with older decomposing basalt and volcanic materials. To the east of the proposed AVA, the soils are primarily formed from Columbia River basalt and sedimentary materials.

Elevation

The proposed Tualatin Hills AVA is located in the upland hills of the Tualatin River watershed and encompasses elevations between 200 and 1,000 feet. According to the petition, 1,000 feet is generally considered the upper limit for growing commercial wine grapes in this region of Oregon, and there are very few commercial vineyards above that elevation. At higher elevations, there is a danger of late spring frosts, which can delay bud break and damage new growth, as well as a danger of early fall frosts, which can damage fruit that has not been harvested. The petition notes that the 1,000-foot elevation contour also corresponds to the boundary of the established Willamette Valley AVA, which shares a portion of its boundary with the proposed AVA.

The boundaries of the proposed AVA were drawn to exclude elevations below 200 feet because, according to the petition, the lower elevations have characteristics that are significantly different from those of the proposed AVA. For instance, soils in the surrounding regions with elevations below 200 feet are alluvial, rather than loess. As a result, the soils below 200 feet are generally higher in fertility and less well-drained than the soils within the proposed AVA. Highly fertile soils can cause overly vigorous vine growth, and poorly drained soils can promote the growth of mold and mildew on the vines. Furthermore, the petition states that elevations below 200 feet are relatively flat and thus experience less air movement than the surrounding higher elevations. Cold air can drain from the hillsides, reducing the risk of frost in hillside vineyards, but the cold air will pool in the lower, flatter regions and increase the risk of frost there. Additionally, air moving down the hillsides can also prevent the growth of mold and mildew on hillside vineyards by drying excess moisture from the vines.

The proposed AVA is surrounded to the north and west by the higher elevations of the Coastal Range. Elevations typically exceed 1,000 feet in these regions. To the east of the proposed AVA is the broad, flat plain of the Tualatin River Valley, where elevations are generally below 200 feet. The petition notes that there is a small region between the northeast corner and the southeast corner of the proposed AVA that has similar elevations to the proposed AVA. However, this region was not included in the proposed AVA because it is within the urban development zone of metro Portland and is currently used for commercial and residential buildings and public parks; there is no commercial viticulture in this area. To the south and southeast of the proposed AVA are the Chehalem Mountains, which includes elevations of over 1,000 feet and, according to the petition, is considered to be a separate, distinct landform from the uplands within the proposed Tualatin Hills AVA.

Climate [2]

The proposed Tualatin Hills AVA is located in the rain shadow of the Oregon Coast Range (Coast Range). According to the petition, the higher elevations of the Coast Range create a buffer to the maritime influences of the Pacific Ocean, which is approximately 45 miles west of the proposed AVA. As a result, the proposed AVA receives less rainfall annually than the regions to the north and west, which are more exposed to the moisture-laden marine air. Forest Grove, Oregon, which is located roughly in the center of the proposed AVA, receives an average of 43.67 inches of rainfall annually, while St. Helens to the north of the proposed AVA receives 50 inches, and Tillamook State Forest to the west of the proposed AVA receives 87.99 inches. Portland, which is approximately 30 miles east of the proposed AVA and farther within the rain shadow of the Coast Range, receives slightly less rainfall than the proposed AVA, averaging 41.96 inches. McMinnville, which is approximately 20 miles south of the proposed AVA, has an average annual rainfall amount of 42.15 inches. The petition states that without the sheltering effect of the Coast Range, rainfall amounts in the proposed AVA would be similar to those of the regions to the west and north. Excessively high rainfall amounts can promote the growth of mold and mildew, which can seriously damage grape vines.

The petition also discussed the diurnal temperature variations that occur within the proposed AVA and the surrounding regions. Diurnal temperature variation is the difference between the daytime high temperature and the nighttime low temperature. The proposed Tualatin Hills AVA has an average growing season diurnal variation of 23.75 degrees Fahrenheit (F). The regions to the north, east, and west of the proposed AVA have lower diurnal temperature variations, averaging 20.79, 20.13, and 19.13 degrees F, respectively. The region to the south has a higher average diurnal variation, with 25.63 degrees F.

According to the petition, diurnal temperature variations during the growing season have an effect on viticulture. Sugar levels increase and acid levels decrease in grapes as daytime temperatures increase. If ripening progresses too quickly due to high daytime temperatures, the desired sugar and acid levels could be reached before the flavor and aroma compounds in the grapes have fully developed. If nighttime temperatures remain high, the process of sugar development and acid loss will continue at night. However, a drop in nighttime temperatures will stop or slow the process of sugar development and acid loss, allowing the grapes more time to develop the flavor and aroma compounds. The greater the drop in temperatures, the more the sugar development and acid loss will slow. The petition states that the diurnal temperature differences in the proposed AVA are well suited for growing Pinot Noir, which is the most commonly grown grape varietal in the proposed AVA and requires a long ripening period in order to fully develop its flavor and aroma compounds.

Summary of Distinguishing Features

In summary, the soils, elevation, and climate of the proposed Tualatin Hills AVA distinguish it from the surrounding regions. The proposed AVA is characterized by Laurelwood soils and similar associated types and a lack of exposed volcanic or marine sedimentary soils. Although Laurelwood soils are present outside of

[2] Climate data gathered from 1981–2010 climate normals, which were the most recent climate normals available at the time the petition was submitted.

the proposed AVA, within the Chehalem Mountain range, they are typically mixed with volcanic and sedimentary soils. The elevations of the proposed AVA are between 200 and 1,000 feet, while the regions to the west, north, southeast, and south are higher and the region to the east is lower. Finally, the climate of the proposed AVA is distinguishable from that of the surrounding regions. The proposed AVA receives less annual rainfall than the regions to the north and west, and more rainfall than the regions to the east and south. The average growing season diurnal temperature variations within the proposed AVA are higher than those of each of the surrounding regions except the region to the south.

Comparison of the Proposed Tualatin Hills AVA to the Existing Willamette Valley AVA

T.D. ATF–162, which published in the **Federal Register** on December 1, 1983 (48 FR 232, as amended by T.D. TTB–134, 81 FR 11112, March 3, 2016), established the Willamette Valley AVA in northwestern Oregon (27 CFR 9.90). The Willamette Valley AVA is described in T.D. ATF–162 as a large basin surrounded by mountains to the east, south, and west, and by the Columbia River to the north. Within the Willamette Valley AVA, elevations generally do not exceed 1,000 feet. Temperatures are mild, with annual summer temperatures averaging 68 degrees F and winter temperatures averaging 40 degrees F. Annual rainfall amounts within the Willamette Valley AVA average 40 inches. Soils within the AVA are silty loams and clay loams.

The proposed Tualatin Hills AVA is located in the northwestern portion of the Willamette Valley AVA and shares some broad characteristics with the established AVA. For example, elevations within the proposed AVA are generally below 1,000 feet. Average annual high and low temperatures are also within the ranges found in the Willamette Valley AVA. Finally, the soils of the proposed AVA contain silt and clay.

However, the proposed AVA also has characteristics that are distinct from the Willamette Valley AVA. For example, the Laurelwood soils and associated soil series are the predominant soils of the proposed AVA and are not found in significant amounts elsewhere in the Willamette Valley AVA. Additionally, the proposed AVA is comprised mainly of rolling hills and lacks the large valley floors that are a major feature of the Willamette Valley AVA. Finally, annual rainfall amounts within the proposed Tualatin Hills AVA are slightly higher than the average amount for the Willamette Valley AVA in general.

Laurelwood District Petition

TTB received a petition from Luisa Ponzi, president of Ponzi Vineyards, Maria Ponzi, winemaker of Ponzi Vineyards, and Kevin Johnson, winemaker of Dion Vineyards, on behalf of themselves and other local grape growers and vintners, proposing the establishment of the ''Laurelwood'' AVA. However, at the request of TTB, the petitioners agreed to add the word ''District'' to the proposed name, in order to avoid a potential impact on current label holders who are using ''Laurelwood'' as a brand name or fanciful name on their wine labels.

The proposed Laurelwood District AVA is located west of the city of Portland and lies entirely within the established Willamette Valley AVA and the established Chehalem Mountains AVA. If established, the proposed Laurelwood District AVA would also share a small portion of its northwestern boundary with a portion of the southeastern boundary of the proposed Tualatin Hills AVA. The proposed Laurelwood District AVA covers approximately 33,600 acres and contains 25 wineries and approximately 70 commercially-producing vineyards that cover a total of approximately 975 acres.

The proposed Laurelwood District AVA has a roughly oblong shape and is oriented along a northwest-to-southeast axis. The distinguishing feature of the proposed AVA is its soils. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this document are from the petition for the proposed Laurelwood District AVA and its supporting exhibits.

Name Evidence

The unincorporated town of Laurelwood is adjacent to the western boundary of the proposed Laurelwood District AVA. Although the town of Laurelwood is not within the proposed AVA, the name Laurelwood has become associated with a larger region, including the region of the proposed AVA. For example, the ''Ananda Center at Laurelwood'' retreat, which is located in the community of Laurelwood, describes its location as ''[w]ithin minutes of Laurelwood Valley,'' [3] suggesting that the region known as ''Laurelwood'' encompasses more than just the town. Furthermore, the proposed AVA is served by the Laurelwood Academy Water Cooperative,[4] and Laurelwood Road is located within the proposed AVA. A real estate listing included with the petition advertises houses ''in peaceful Laurelwood valley,'' [5] and a separate real estate listing makes reference to ''the peaceful community of Laurelwood.'' [6] Finally, one of the U.S.G.S. quadrangle maps used to create the boundary of the proposed AVA is titled ''Laurelwood.''

The petition notes that the community of Laurelwood also gives its name to the primary soil series within the proposed AVA, the Laurelwood soil series. The petition includes an excerpt from a soil survey of Washington County, Oregon, which notes that a ''[r]epresentative profile of Laurelwood silt loam'' is ''located at the top of Iowa Hill.'' Iowa Hill is located within the northern portion of the proposed Laurelwood District AVA. The petition goes on to say that the pervasiveness of Laurelwood soils within the proposed AVA is the primary reason the region is known to those in the wine industry as ''Laurelwood.'' As evidence, the petition included a 2016 pamphlet from a trade tasting featuring wines from the Chehalem Mountains AVA, which contains a map that divides the AVA into several sub-regions—including a region called ''Laurelwood'' that encompasses the proposed AVA. The petition also included excerpts from several articles describing the importance of Laurelwood soil to vineyard owners within the proposed AVA and the effects of the soil on the resulting wines. Finally, the petition included wine labels and wine trade notes from several wineries within the proposed AVA, including Ponzi Vineyards,[7] Anne Amie Vineyards,[8] Raptor Ridge Winery,[9] Alloro

[3] *See* Ananda Center—Laurelwood, (Site last accessed February 15, 2019), *www.anandalaurelwood.org/about/area.*

[4] *See* Laurelwood Academy Water Cooperative, (Site last accessed February 15, 2019), *www.lawatercoop.org.*

[5] *See* Redfin listing for 13200 SW Noblitt Place, Gaston, Oregon 97119, (Site last accessed February 15, 2019), *https://www.redfin.com/OR/Gaston/13200-SW-Noblitt-Pl-97119/home/26692046.*

[6] See Redfin listing for 13875 SW 405 Place, Gaston, Oregon 97119, (Site last accessed February 15, 2019), *https://www.redfin.com/OR/Gaston/13875-SW-405th-Pl-97119/home/108521174.*

[7] *See* Ponzi Vineyards, Notes from Luisa, (Site last accessed February 15, 2019), *https://www.ponzivineyards.com/assets/images/products/media/14-Abetina-PN-Notes.pdf.*

[8] *See* Announcement for 2013 Anne Amie Vineyards Twelve Oaks Estate Chehalem Mountains AVA, (Site last accessed February 15, 2019), *Anneamiewine.s3.amazonaws.com/demo1/wp-content/uploads/13-TOE-PN.pdf.*

[9] *See Announcement for Raptor Ridge Winery—2014 Pinot Noir, Estate Vineyard,* (Site last accessed February 15, 2019), *www.raptorridgewinery.com/*

Continued

Vineyard,[10] and Erath Winery,[11] which all mention the presence of Laurelwood soils in their vineyards.

Boundary Evidence

The proposed Laurelwood District AVA is located in the Chehalem Mountains west of the cities Portland and Sherwood and south of the cities of Forest Grove, Cornelius, Hillsboro, and Scholls. According to the petition, the boundaries are drawn to separate the proposed AVA from regions where the Laurelwood soil is nonexistent or not as pervasive as it is within the proposed AVA. The northern and eastern boundaries of the proposed AVA are concurrent with the boundary of the established Chehalem Mountains AVA and separate the proposed AVA from both the Tualatin Valley and the proposed Tualatin Hills AVA. The southern and western boundaries of the proposed Laurelwood District AVA follow the crest of the Chehalem Mountains, and separate the northeasterly-oriented slopes of the proposed AVA from the southwesterly-facing slopes of the western portion of the Chehalem Mountains.

Distinguishing Feature

According to the petition, the distinguishing feature of the proposed AVA is the predominance of the Laurelwood soil series. Although Laurelwood soil exists outside the proposed Laurelwood District AVA, specifically within the proposed Tualatin Hills AVA to the northwest, the petition states that there are differences between the Laurelwood soil of the proposed Laurelwood District AVA and the Laurelwood soil of the proposed Tualatin Hills AVA. For instance, the Laurelwood soil of the proposed Laurelwood District AVA consist of loess combined with basalt that is older than the basalt found in the Laurelwood soil of the proposed Tualatin Hills AVA. However, the petition states that the primary distinction between the soils of the two proposed AVAs is the contiguity of Laurelwood soil within the proposed Laurelwood District AVA. Within the proposed Tualatin Hills AVA, large concentrations of Laurelwood soil are dispersed throughout, separated by smaller regions without Laurelwood soils. By contrast, within the proposed Laurelwood District AVA, Laurelwood soil covers the entirety of the proposed AVA. Additionally, within the proposed Tualatin Hills AVA, Laurelwood soil is often mixed with related soil series, particularly Kinton and Cornelius soils. Within the proposed Laurelwood District AVA, Kinton and Cornelius soils exist only in small, isolated pockets along the eastern edge.

As previously mentioned, Laurelwood soil is desirable for vineyards because its moderate fertility does not cause overly vigorous growth and the depth to bedrock is sufficient to allow the vine's roots to penetrate deeply into the soil. Because the proposed Laurelwood District AVA has such a large concentration of Laurelwood soils, there are more potential locations for vineyards with this soil than there are within the proposed Tualatin Hills AVA.

To the east and northeast of the proposed Laurelwood District AVA, the soils are a variety of soils derived from the sediments of the Missoula Floods. To the southwest of the proposed AVA, within the Chehalem Mountains AVA, the soils are primarily Jory and Willakenzie soils. To the southeast of the proposed AVA, on Parrett Mountain, the soils are primarily of the Jory and Saum series.

Comparison of the Proposed Laurelwood District AVA to the Existing Willamette Valley AVA

T.D. ATF–162, which published in the **Federal Register** on December 1, 1983, (48 FR 232, as amended by T.D. TTB–134, 81 FR 11112, March 3, 2016), established the Willamette Valley AVA in northwestern Oregon (27 CFR 9.90). The Willamette Valley AVA is described in T.D. ATF–162 as a large basin surrounded by mountains to the east, south, and west, and by the Columbia River to the north. Within the Willamette Valley AVA, elevations generally do not exceed 1,000 feet. Temperatures are mild, with annual summer temperatures averaging 68 degrees F and winter temperatures averaging 40 degrees F. Annual rainfall amounts within the Willamette Valley AVA average 40 inches. Soils within the AVA are silty loams and clay loams.

The proposed Laurelwood District AVA is located in the northwestern portion of the Willamette Valley AVA and shares several characteristics with the larger established AVA. For example, both the proposed AVA and the established AVA are within the rain shadow of the Cascade Mountains. As a result, both share similar annual rainfall amounts of between 40 and 50 inches. The average growing season temperatures within the proposed AVA are also similar to those of the established Willamette Valley AVA, as demonstrated by the number of growing degree days (GDDs) in both regions. According to a climate map included in the petition, both regions average between 1,500 and 2,000 GDDs.

However, the proposed Laurelwood District AVA also has characteristics that are distinct from the Willamette Valley AVA. For example, the Laurelwood soils are the predominant soils of the proposed AVA and are not found in significant amounts elsewhere in the Willamette Valley AVA, with the exception of the proposed Tualatin Hills AVA. The petition states that the primary soils for grape growing in the majority of the Willamette Valley AVA are Willakenzie, which is derived from marine sediments, and Jory, which is comprised of residuum derived from basalt. Additionally, the proposed Laurelwood District AVA does not contain broad valleys, which are found throughout the established Willamette Valley AVA.

Comparison of the Proposed Laurelwood District AVA to the Existing Chehalem Mountains AVA

T.D. TTB–56, which published in the **Federal Register** on November 27, 2006 (71 FR 68458), established the Chehalem Mountains AVA (27 CFR 9.205) in northwestern Oregon, in the northern region of the Willamette Valley AVA. The Chehalem Mountains AVA is described in T.D. TTB–56 as a single, continuous landmass lifted from the floor of the Willamette Valley. The Chehalem Mountains AVA are bordered by the valley of the Tualatin River to the west and north, the wetlands of Rock Creek and Seely Ditch to the east, the floodplain of the Willamette River to the southeast, and the Chehalem Valley to the southwest. The topography of the AVA is characterized by mountainous and hillside terrain, with elevations between 200 and 1,600 feet. Most of the vineyards within the AVA are planted at elevations between 200 and 1,000 feet.

The proposed Laurelwood District AVA shares some of the same characteristics of the larger Chehalem Mountains AVA. For example, the proposed AVA consists of hilly-to-mountainous terrain, and vineyards within the proposed AVA are planted at elevations between 200 and 1,000 feet. However, the Chehalem Mountains AVA contains a wide diversity of soils. The proposed Laurelwood District AVA, by contrast, is dominated by

assets/client/File/2014%20PN%20Estate%20 Vineyard%20Media%20Sheet.pdf.

[10] *See* Announcement for Alloro Vineyard—2014 Estate 'Justina' Pinot Noir, (Site last accessed February 15, 2019), *https://www.allorovineyard.com/assets/client/File/AlloroJus PN14%20TechSheet.pdf.*

[11] *See* Announcement for Erath Winery—2014 Dion Vineyard Pinot Noir, (Site last accessed February 15, 2019), *https://www.erath.com/files/FileResource/22244/ERAFS2014DionVineyard PinotN.pdf.*

Laurelwood soil, which is not found in the remainder of the Chehalem Mountains AVA.

TTB Determination

TTB concludes that the petitions to establish the approximately 144,000-acre Tualatin Hills AVA and the approximately 33,600-acre Laurelwood District AVA merit consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVAs in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioners provided the required maps, and they are listed below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes the proposed Tualatin Hills AVA, its name, ''Tualatin Hills,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name ''Tualatin Hills'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule. TTB is not proposing ''Tualatin,'' standing alone, as a term of viticultural significance if the proposed AVA is established, in order to avoid a potential conflict with a current label holder. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full name ''Tualatin Hills'' as a term of viticultural significance for purposes of part 4 of the TTB regulations.

The approval of the proposed Tualatin Hills AVA would not affect any existing AVA, and any bottlers using ''Tualatin Hills'' as an appellation of origin or in a brand name for wines made from grapes grown within the Tualatin Hills AVA would not be affected by the establishment of this new AVA. The establishment of the proposed Tualatin Hills AVA would allow vintners to use ''Tualatin Hills'' and ''Willamette Valley'' as appellations of origin for wines made from grapes grown within the proposed Tualatin Hills AVA, if the wines meet the eligibility requirements for the appellation.

If TTB establishes the proposed Laurelwood District AVA, only its entire name, ''Laurelwood District,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name ''Laurelwood District'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule. TTB is not proposing ''Laurelwood,'' standing alone, as a term of viticultural significance if the proposed AVA is established, in order to avoid a potential conflict with current label holders. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full name ''Laurelwood District'' as a term of viticultural significance for purposes of part 4 of the TTB regulations.

The approval of the proposed Laurelwood District AVA would not affect any existing AVA, and any bottlers using ''Laurelwood District'' as an appellation of origin or in a brand name for wines made from grapes grown within the Laurelwood District AVA would not be affected by the establishment of this new AVA. The establishment of the proposed Laurelwood District AVA would allow vintners to use ''Laurelwood District,'' ''Chehalem Mountains,'' and ''Willamette Valley'' as appellations of origin for wines made from grapes grown within the proposed Laurelwood District AVA, if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed AVAs. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, climate, soils, and other required information submitted in support of the petitions. With regards to the proposed Tualatin Hills AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing Willamette Valley AVA, which the proposed AVA is located within, and from the proposed neighboring Laurelwood District AVA. TTB is also interested in comments on whether the geographic features of the proposed Tualatin Hills AVA are so distinguishable from the surrounding Willamette Valley AVA that the proposed AVA should no longer be part of the established AVA. Please provide any available specific information in support of your comments.

With regards to the proposed Laurelwood District AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from both the existing Willamette Valley and Chehalem Mountains AVAs, both of which contain the proposed AVA, and from the proposed neighboring Tualatin Hills AVA. TTB is also interested in comments on whether the geographic features of the proposed Laurelwood District AVA are so distinguishable from the surrounding Willamette Valley and Chehalem Mountains AVAs that the proposed AVA should no longer be part of one or both of the existing AVAs. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Tualatin Hills AVA on wine labels that include the term ''Tualatin Hills'' and the proposed Laurelwood District AVA on wine labels that include the term ''Laurelwood District,'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed AVA names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe

the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the AVA.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

• *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2019–0003 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 181 on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the ''Help'' tab.

• *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

• *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 181 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

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.

Public Disclosure

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2019–0003 on the Federal e-rulemaking portal, *Regulations.gov*, at *http://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 181. You may also reach the relevant docket through the *Regulations.gov* search page at *http://www.regulations.gov.* For information on how to use *Regulations.gov*, click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW, Suite 400, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or other similarly-sized documents that may be included as part of the AVA petition. Contact TTB's Regulations and Rulings Division at the above address, by email at *https://www.ttb.gov/webforms/contact_RRD.shtm,* or by telephone at 202–453–1039, ext. 175, to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.____ to read as follows:

§ 9.____ Tualatin Hills.

(a) *Name.* The name of the viticultural area described in this section is ''Tualatin Hills''. For purposes of part 4 of this chapter, ''Tualatin Hills'' is a term of viticultural significance.

(b) *Approved maps.* The 6 United States Geological Survey (USGS) 1:24,000 scale topographic maps and the single 1:250,000 scale topographic map used to determine the boundary of the Tualatin Hills viticultural area are titled:

(1) Vancouver, 1974 (1:250,000);
(2) Dixie Mountain, OR, 2014;
(3) Gaston, OR, 2014;
(4) Laurelwood, OR, 2014;
(5) Forest Grove, OR, 2014;
(6) Hillsboro, OR, 2014; and
(7) Linnton, OR, 2014.

(c) *Boundary.* The Tualatin Hills viticultural area is located in Clackamas, Multnomah and Washington Counties, in Oregon. The boundary of the Tualatin Hills viticultural area is as described below:

(1) The beginning point is on the Dixie Mountain map at the intersection of North West Skyline Boulevard and North West Moreland Road. From the

beginning point, proceed southwesterly along North West Moreland Road for approximately 1.3 miles to road's intersection with the Multnomah–Washington County line; then

(2) Proceed south along the Multnomah–Washington County for approximately 1.2 miles to the county line's intersection with the 1,000-foot elevation contour; then

(3) Proceed northwesterly along the 1,000-foot elevation contour, crossing onto the Vancouver map and continuing generally southwesterly along the meandering 1,000-foot elevation contour to its intersection with the Washington–Yamhill County line; then

(4) Proceed east along the Washington–Yamhill County line, crossing onto the Gaston map, to the intersection of the county line with NW South Road; then

(5) Proceed northeast along NW South Road to its intersection with SW South Road; then

(6) Proceed northeasterly along SW South Road to its intersection with the 200-foot elevation contour; then

(7) Proceed easterly along the 200-foot elevation contour for approximately 1.9 miles to its intersection with East Main Street/SW Gaston Road in the village of Gaston; then

(8) Proceed south, then east along SW Gaston Road for approximately 0.9 mile, crossing onto the Laurelwood map, to the road's intersection with the 240-foot contour line just south of an unnamed road known locally as SW Dixon Mill Road; then

(9) Proceed north along the meandering 240-foot elevation contour for approximately 5 miles to its intersection with SW Sandstrom Road; then

(10) Proceed west along SW Sandstrom Road for approximately 0.15 mile to its third crossing of the 200-foot elevation contour; then

(11) Proceed northwesterly and then northeasterly along the meandering 200-foot contour line for approximately 2.9 miles to its intersection with an unnamed road known locally as SW Fern Hill Road, north of an unnamed road known locally as SW Blooming Fern Hill Road; then

(12) Proceed north along SW Fern Hill Road for approximately 1.2 miles, crossing onto the Forest Grove map, to the road's intersection with Oregon Highway 47; then

(13) Proceed northerly along Oregon Highway 47 for approximately 7.6 miles to its intersection with Oregon Highway 6/NW Wilson River Highway; then

(14) Proceed east along Oregon Highway 6/NW Wilson River Highway for approximately 2.5 miles to its intersection with Sunset Highway; then

(15) Proceed southeast along Sunset Highway for approximately 2.3 miles to its intersection with the railroad tracks; then

(16) Proceed east along the railroad tracks, crossing onto the Hillsboro map, to the intersection of the railroad tracks and an unnamed road known locally as NW Dick Road; then

(17) Proceed south along NW Dick Road for approximately 0.3 mile to its intersection with NW Phillips Road; then

(18) Proceed east along NW Phillips Road for approximately 1.2 miles, crossing onto the Linnton map, to the road's intersection with an unnamed road known locally as NW Old Cornelius Pass Road; then

(19) Proceed northeast along NW Old Cornelius Pass Road to its intersection with NW Skyline Boulevard Road; then

(20) Proceed north and west along NW Skyline Boulevard for approximately 10.5 miles, crossing over the northeast corner of the Hillsboro map and onto the Dixie Mountain map and then returning to the beginning point.

■ 3. Subpart C is amended by adding § 9.____to read as follows:

§ 9.____ Laurelwood District.

(a) *Name.* The name of the viticultural area described in this section is ''Laurelwood District''. For purposes of part 4 of this chapter, ''Laurelwood District'' is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Laurelwood District viticultural area are titled:

(1) Laurelwood, OR, 2014;

(2) Scholls, Oreg., 1961; photorevised 1985;

(3) Newberg, OR, 2014;

(4) Beaverton, Oreg., 1961; photorevised 1984;

(5) Sherwood, Oreg., 1961; photorevised 1985; and

(6) Dundee, Oreg., 1956; revised 1993.

(c) *Boundary.* The Laurelwood District viticultural area is located in Washington and Yamhill Counties, in Oregon. The boundary of the Laurelwood District viticultural area is as described below:

(1) The beginning point is on the Laurelwood map at the intersection of Winters Road and Blooming Fern Hill Road in section 17, T1S/R3W. From the beginning point, proceed west then northwest along Blooming Fern Hill Road for approximately 0.4 mile to its intersection with the 200-foot elevation contour; then

(2) Proceed north then northeasterly along the 200-foot elevation contour for 1.5 miles to its intersection with SW La Follette Road; then

(3) Proceed south along SW La Follette Road for 0.25 mile to its intersection with the 240-foot elevation contour, north of Blooming Fern Hill Road; then

(4) Proceed easterly then southerly along the 240-foot elevation contour, crossing onto the Scholls map and back onto the Laurelwood map, for a total of 17 miles to the intersection of the elevation contour with SW Laurel Road; then

(5) Proceed east along SW Laurel Road for 0.15 mile to its intersection with the 200-foot elevation contour; then

(6) Proceed easterly along the 200-foot elevation contour, crossing over the Scholls map and onto the Newberg map, then crossing Heaton Creek and back onto the Scholls map for a total of 17.5 miles to the intersection of the elevation contour with Mountain Home Road east of Heaton Creek; then

(7) Proceed easterly then southerly along the 200-foot elevation contour, crossing over the Beaverton and Sherwood maps and back onto the Scholls map for a total of 8.9 miles to the intersection of the elevation contour with the middle tributary of an unnamed stream along the western boundary of section 24, T2S/R2W; then

(8) Proceed southeast along the 200-foot elevation contour, crossing over the northeast corner of the Newberg map and onto the Sherwood map, to the intersection of the elevation contour with Edy Road in section 25, T2S/R2W; then

(9) Proceed southwest along the 200-foot elevation contour, crossing onto the Newberg map and back onto the Sherwood map, to the intersection of the elevation contour with Elwert Road along the eastern boundary of section 25, T2S/R2W; then

(10) Proceed south along Elwert Road for 0.85 mile to its intersection with an unnamed highway known locally as Oregon Highway 99W, along the eastern boundary of section 36, T2S/R2W; then

(11) Proceed southwesterly along Oregon Highway 99W for 0.45 mile to its intersection with the 250-foot elevation contour immediately south of an unnamed tributary of Cedar Creek in section 36, T2S/R2W; then

(12) Proceed southerly along the 250-foot elevation contour for 1 mile to its intersection with Middleton Road in section 1, T2S/R2W; then

(13) Proceed southwesterly along Middleton Road, which becomes Rein Road, for 0.5 mile to the intersection of the road with the 200-foot elevation contour immediately south of Cedar Creek; then

(14) Proceed easterly along the 200-foot elevation contour for 1.6 miles to its intersection with an unnamed light-duty east-west road known locally as Brookman Road in the village of Middleton, section 6, T3S/R1W; then

(15) Proceed east on Brookman Road for 0.4 mile to its intersection with the shared Washington–Clackamas County line at the western corner of section 5, T3S/R1W; then

(16) Proceed south along the Washington–Clackamas County line for 1 mile to its intersection with Parrett Mountain Road along the eastern boundary of section 7, T3S/R1W; then

(17) Proceed southwesterly along Parrett Mountain Road, crossing onto the Newberg map, for a total of 2.6 miles, to the intersection with an unnamed local road known locally as NE Old Parrett Mountain Road; then

(18) Proceed west along NE Old Parrett Mountain Road for 1.7 mile to its intersection with NE Schaad Road; then

(19) Proceed west along NE Schaad Road for 0.5 mile to its intersection with an unnamed local road known locally as NE Corral Creek Road; then

(20) Proceed north along NE Corral Creek Road for 0.9 mile to its westernmost intersection with an unnamed local road known locally as NE Veritas Lane, south of Oregon Highway 99W; then

(21) Proceed north westerly in a straight line for approximately 0.05 mile to the intersection of Oregon Highway 99W and the 250-foot elevation contour; then

(22) Proceed northwesterly along the 250-foot elevation contour for 1 mile to its intersection with the second, westernmost intermittent stream that is an unnamed tributary of Spring Brook; then

(23) Proceed northerly along the unnamed stream, crossing the single-gauge railroad track, for 0.5 mile to the intersection of the stream with the 430-foot elevation contour; then

(24) Proceed west along the 430-foot elevation contour for 0.25 mile, crossing an unnamed road known locally as Owls Lane, to the intersection of the elevation contour with NE Kincaid Road; then

(25) Proceed northwesterly along NE Kincaid Road for 0.25 mile to its intersection with NE Springbrook Road; then

(26) Proceed northwesterly along NE Springbrook Road for 0.22 mile to its intersection with an unnamed road known locally as Bell Road; then

(27) Proceed east along Bell Road for 0.5 mile, making a sharp northwesterly turn, then continuing along the road for 0.2 mile to its intersection with Mountain Top Road; then

(28) Proceed northwesterly along Mountain Top Road for 1.9 miles to its intersection with SW Hillsboro Highway, also known as Highway 219; then

(29) Proceed north along SW Hillsboro Highway for 0.1 mile to its intersection with Mountain Top Road at the Washington–Yamhill County line; then

(30) Proceed northwest along Mountain Top Road for 3.1 miles, crossing onto the Dundee map, to the intersection of the road with Bald Peak Road in section 26, T2S/R3W; then

(31) Proceed northwest, then northeast, then north along Bald Peak Road, crossing onto the Laurelwood map, for a total of 4.8 miles, to the intersection of the road with SW Laurelwood Road; then

(32) Proceed southwest, then northwest, along SW Laurelwood Road for 0.8 mile to its intersection with the 700-foot elevation contour; then

(33) Proceed northeast, then northwest, then north along the 700-foot elevation contour for 5 miles, passing west of Iowa Hill and Spring Hill, to the intersection of the elevation contour and SW Winters Road; then

(34) Proceed north on SW Winters Road for 2 miles, returning to the beginning point.

Dated: March 25, 2019.

John J. Manfreda,

Administrator.

Approved: April 30, 2019.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2019–12872 Filed 6–18–19; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 423

[CMS–4189–P]

RIN 0938–AT94

Medicare Program; Secure Electronic Prior Authorization for Medicare Part D

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes a new transaction standard for the Medicare Prescription Drug Benefit program's (Part D) e-prescribing program as required by the ''Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act'' or the ''SUPPORT for Patients and Communities Act.'' Under the SUPPORT for Patients and Communities Act, the Secretary is required to adopt standards for Part D e-prescribing program to ensure secure electronic prior authorization request and response transmissions. If finalized, the proposals in this rule would amend the Part D e-prescribing regulations to require Part D plan sponsors' support of version 2017071 of the National Council for Prescription Drug Programs (NCPDP) SCRIPT standard for use in electronic Prior Authorization (ePA) transactions with prescribers regarding Part D covered drugs to Part D-eligible individuals.

DATES: To be assured consideration, comments must be received at one of the addresses provided, no later than 5 p.m. on August 16, 2019.

ADDRESSES: In commenting, please refer to file code CMS–4189–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4189–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4189–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joella Roland (410) 786–7638.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

The purpose of this rule is to propose a new transaction standard for the Part D e-prescribing program. Under this proposal, Part D plan sponsors would be required to support version 2017071 of the National Council for Prescription Drug Programs (NCPDP) SCRIPT standard for four electronic Prior Authorization (ePA) transactions, and prescribers would be required to use that standard when performing ePA transactions for Part D-covered drugs they wish to prescribe to Part D-eligible individuals. Part D plans, as defined in 42 CFR 423.4, include Prescription Drug Plans (PDPs) and Medicare Advantage Prescription Drug Plans (MA–PDs); Part D sponsor, as defined in 42 CFR 423.4, means the entity sponsoring a Part D plan, MA organization offering a MA–PD plan, a PACE organization sponsoring a PACE plan offering qualified prescription drug coverage, and a cost plan offering qualified prescription drug coverage. The proposed ePA transaction standard would provide for the electronic transmission of information between the prescribing health care professional and Part D plan sponsor to inform the sponsor's determination as to whether or not a prior authorization (PA) should be granted. The NCPDP SCRIPT version 2017071 was approved in CMS 4182–F published on April 16, 2018 (83 FR 16440) effective June 15, 2018 and materials are incorporated by reference of certain publications listed in the rule as approved by the Director of the Federal Register as of June 15, 2018.

An ePA transaction standard would allow a prescriber using an electronic prescribing (eRx) system or an electronic health record (EHR) with eRx capability to determine whether the beneficiary's plan requires a PA for a given medication. If the prescriber enters such a prescription into an eRx system, a message will be returned to the provider indicating that a PA is required. Use of the ePA transactions would then enable the prescriber to submit the information required to fulfill the terms of the PA in real time.

A. Legislative Background

1. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191) was enacted on August 21, 1996. Title II, Subtitle F of HIPAA requires covered entities—health plans, health care providers that conduct covered transactions, and health care clearinghouses—to use the standards HHS adopts for certain electronic transactions. The standards adopted by HHS for purposes of HIPAA are in regulations at 45 CFR part 162.

2. Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) was enacted on December 8, 2003. It amended Title XVIII of the Social Security Act (the Act) by redesignating Part D as Part E and inserting a new Part D to establish a voluntary prescription drug benefit program. As part of that program, section 1860D–4(e) of Act as added by the MMA required the adoption of Part D e-prescribing standards for electronic prescriptions and prescription-related transactions between Part D plan sponsors, providers, and pharmacies. The Secretary's selection of standards is informed by the National Committee on Vital and Health Statistics (NCVHS). Under section 1860D–4(e)(4)(B) of the Act, NCVHS develops recommendations for Part D e-prescribing standards, in consultation with specified groups of organizations and entities. These recommendations are then taken into consideration when developing, adopting, recognizing, or modifying Part D e-prescribing standards. The statute further requires that the selection of standards designed, to the extent practicable, not impose an undue administrative burden on prescribers or dispensers, are compatible with standards established under Part C of title XI of the Act (the HIPAA standards), and with general health information technology standards and permit electronic exchange of drug labeling and drug listing information maintained by the Food and Drug Administration and the Library of Medicine.

The standards adopted by CMS for purposes of the Part D e-prescribing program are in regulations at 42 CFR 423.160. Part D plan sponsors are required to support the Part D e-prescribing program transaction standards, and providers and pharmacies that conduct electronic transactions for which a program standard has been adopted must do so using the adopted standard. See the February 4, 2005 proposed rule titled ''Medicare Program, E-Prescribing and the Prescription Drug Program'' (70 FR 6256) for additional information about the MMA program authority.

3. Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT for Patients and Communities Act)

The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (Pub. L 115–271), hereinafter referred to as the ''SUPPORT for Patients and Communities Act,'' was enacted on October 24, 2018. Section 6062 of the SUPPORT for Patients and Communities Act amended section 1860D–4(e)(2) of the Social Security Act to require the adoption of transaction standards for the Part D e-prescribing program to ensure secure ePA request and response transactions between prescribers and part D plan sponsors no later than January 1, 2021. Such transactions are to include an ePA request transaction standard for prescribers seeking an ePA from a Part D plan sponsor for a Part D covered drug for a Part D-eligible individual, as well as an ePA response transaction standard for the Part D plan sponsor's response to the prescriber. A facsimile, a proprietary payer portal that does not meet standards specified by the Secretary or an electronic form are not treated as electronic transmissions for the purposes of ePA requests. Such standards are to be adopted in consultation with the NCPDP or other standard setting organizations the Secretary finds appropriate, as well as other stakeholders. Finally, the SUPPORT for Patients and Communities Act also authorized the adoption of ePA transaction standards for part D covered drugs for part D eligible individuals ''notwithstanding'' any other provision of law.

B. Regulatory History

In 2000, the Secretary adopted HIPAA transaction standards for the ''referral certification and authorization transaction''. The term ''referral certification and authorization transaction'' is defined at 45 CFR 162.1301 as the transmission of any of the following: (1) A request from a health care provider to a health plan for

the review of health care to obtain an authorization for the health care; (2) a request from a health care provider to a health plan to obtain authorization for referring an individual to another health care provider; and (3) a response from a health plan to a health care provider to a request described in (1) or (2). The first HIPAA standard adopted for this transaction was version 4010 of the X12 278 (65 FR 50371, August 17, 2000). In 2003, the Secretary adopted another standard, the NCPDP version 5.1, for retail pharmacy drug referral certification and authorization transactions and specified that version 4010 of the X12 278 was to be used only for dental, professional, and institutional referral certification and authorization transactions (see the February 20, 2003 **Federal Register** (68 FR 8398)). Still, as of 2003, the Secretary had not adopted a standard for ePA for medications specifically.

In 2004, NCPDP formed a multi-industry, multi-Standards Development Organization (SDO) ePA Task Group to evaluate existing PA standards and promote standardized ePA, with a focus on the medication context. The Task Group considered the X12 278 standard, but determined that there were certain gaps in the X12 278 standard that made the standard difficult to use for ePA, including that the standard was unable to support attachments for PA determinations, incorporate free text in certain fields, and allow functionality for real-time messaging. As a result of these findings, the Task Group wrote a letter to the HHS Secretary stating that the X12 278 standard offered limited support for ePA and urged HHS to test new versions of the standard.

In 2006, CMS made awards to grantees as part of a pilot to test e-prescribing standards. The participants in the pilot identified further gaps in the X12 278 standard that made it inadequate for use with medication PAs. These gaps included no mechanism for providers to request and explain reasons for deviating from standard medication dosing instructions, requiring certain fields that are not applicable to drugs, and no limit on diagnosis codes, which required clinicians to select from hundreds of options to find the appropriate code.

After the pilot, stakeholders continued to try to improve the X12 278 standard by starting the process of adding new fields to the X12 278 standard to try to make it better able to support ePA. However, after testing the modified X12 278 standard in 2006, NCPDP determined that the improved X12 278 standard was still inadequate to support ePA, due to the inability to exchange transactions in real-time.

On January 16, 2009, the Secretary adopted later versions of the HIPAA transaction standards, requiring NCPDP Telecommunications D.0 instead of NCPDP 5.1 and version 5010 instead of version 4010 of the X12 278 to be used for referral certification and authorization transactions (74 FR 3326) because it was determined that the X12 278 standard served the needs for non-pharmacy claims. These standards are specified at 45 CFR 162.1302(b)(2).

However, these revised standards still have the same impediments for ePA as they still require information such as the patient diagnosis code which is not available on prescription processing and omits other information needed for ePA such as directions and dose. Further, it remains a batch standard which does not accommodate the real time nature of prescription claims.

In the meantime, interest was once again building in the industry to develop and test alternative ePA transaction standards. NCPDP took into account its experience with previous transaction standards as it began to frame what would ultimately become its NCPDP SCRIPT ePA standard, version 2013101, which included the ability to send attachments in a standardized format. In a May 15, 2014 letter to the HHS Secretary, NCVHS stated that they had received a letter from the NCPDP recommending its SCRIPT Standard Version 2013101 standard for carrying out medication ePA transactions. (For more information see, *https://ncvhs.hhs.gov/wp-content/uploads/2014/05/140515lt2.pdf.*) NCVHS reported hearing from NCPDP stakeholders that NCPDP investigators tasked with reviewing the X12 278 standard for use as an ePA transaction found that the HIPAA transaction standards for PA transactions (the 278 v4010 or v5010) were not adequate to support medication PA. The standard was designed for PA of procedures/services or durable medical equipment (DME), so did not adequately accommodate the information necessary to facilitate medication PA. NCPDP also noted that X12 278 is not widely used for ePA of prescription medications as evidence of its inadequacy for this purpose.

In response to NCVHS' May 2014 letter, we reviewed the X12 278, and found that the X12 278 standard is designed to conduct batch transactions which could not be used to support real time prescribing. For example, if a PA were to be submitted using the X12 278 standard, the PA would not accommodate a field for National Drug Codes (NDCs) and dosage information field, which are integral when evaluating medication requests. Since the X12 278 standard does not have a standard method to process ePA transactions, prescribers would have to find a place to insert NDCs and look up the codes using another source. In contrast, NCPDP SCRIPT ePA Version 2013101 and 2017 transactions are prepopulated with all NDCs and dosage information so the prescriber can choose among appropriate options.

Another standard that we are aware of is the NCPDP Telecommunications D.0 standard. However, this standard, does not have the ability to look up and convey NDCs and dosages. The NCPDP Telecommunications D.0 standard was designed to be a standard for insurance companies to approve claims, so it does not include content fields that are relevant to ePA, such as clinical fields and beneficiary-specific information nor does it have the ability to transmit information in real time. As such it is not frequently used by prescribers because it cannot collect information needed for satisfying a medication PA.

In our review of the standard, CMS found that the X12 278 standard is by nature a batch standard which cannot support real-time consideration of prescriptions. For example if a PA were to be submitted using the X12 278 standard, the PA would not be submitted to the plan until the following day, the plan would review it in the second day and, if all the information were correct, the approval would be conveyed back to the physician 3 days after the prescription was captured in the batching process. The reason for this is because the X12 278 is designed to batch the transactions, since this is what is optimal in the DME context. However, this is not optimal in the ePA context, since it would result in ePA transactions taking days to process. Resolution of the ePA would be further delayed if the plan needed additional information on the PA request.

This is in contrast to the SCRIPT ePA standard, which conveys information to the plan in real time that allows the patient to access a medication subject to PA the same day that the prescription and ePA are submitted.

In addition, X12 278 collects a standard set of information. However, PA criteria vary by medication being authorized: For some medications the plan may need to determine whether the patient had been on the same medication previously, or on another comparable medication or what the mediation is being used for, while for other medications this may not be

necessary. In contrast, the SCRIPT ePA transaction requires that plans develop specific sets of questions for each drug that requires PA so that they can be answered when the ePA is submitted.

Finally, there is an inconsistency between the types of information that are required to be submitted on a DME claim, which is what the X12 278 transaction was designed to support, and the type of information that is required to be submitted for medications. For example, the X12 278 standard requires the diagnosis to be submitted, which is not required on prescription claims, but it does not accommodate a field for National Drug Codes (NDCs) and dosage information fields that are integral when evaluating medication requests. Because the X12 278 transaction is not specifically created to process medications, prescribers would have to find a place to insert NDCs and look up the codes using another source. In contrast, the SCRIPT ePA standard is prepopulated with all NDCs and dosage information so the prescriber can chose among appropriate options.

Despite these findings and NCPDP recommendation to NCVHS, we did not pursue proposing the NCPDP SCRIPT Standard Version 2013101 as a Part D eRx standard for medication PA transactions because it was contrary to the HIPAA requirements, which require use of the X12 278 standard. Similarly, when NCPDP wrote on May 24, 2017 to CMS to recommend the adoption of its NCPDP SCRIPT Standard Version 2017071, we were unable to consider it for the Part D e-prescribing program unless the HIPAA transaction standards for referral certifications and authorizations were modified.

The Part D e-prescribing program's authorizing statute requires selection of Part D standards that are compatible with the HIPAA standards (see section 1860D–4(e)(4) of the Act), so we have historically ensured that our Part D e-prescribing program standards are compatible with the HIPAA transaction standards. (For additional information, see the February 4, 2005 proposed rule (70 FR 6256).)

However, given the new authority under the SUPPORT for Patients and Communities Act, we believe we now have authority to adopt Part D eRx ePA transaction standards ''notwithstanding'' any other provision of law if such proposals are framed in consultation with stakeholders and the NCPDP or other standard setting organizations the Secretary finds appropriate. See section 1860D–4(e)(2)(E)(ii)(III) of the Act, as amended by section 6062 of the SUPPORT for Patients and Communities Act. We believe that this provision explicitly authorizes us to require the use of a PA standard in the Part D context that is different from the HIPAA standard, as long as it is for a Part D-covered drug prescribed to a Part D-eligible individual.

As previously described, Part D plan sponsors are required to establish electronic prescription drug programs that comply with the e-prescribing standards that are adopted under e-prescribing program's authorizing statute. There is no requirement that prescribers or dispensers implement eRx. However, prescribers and dispensers who electronically transmit and receive prescription and certain other information regarding covered drugs prescribed for Medicare Part D-eligible beneficiaries, directly or through an intermediary, are required to comply with any applicable standards that are in effect.

The Part D e-prescribing program currently requires providers and dispensers to utilize the NCPDP SCRIPT standard, Implementation Guide Version 10.6, which was approved November 12, 2008, for the communication of a prescription or prescription-related information for certain named transactions. However, as of January 1, 2020, we established through rulemaking that prescribers and dispensers will be required to use the NCPDP SCRIPT standard, Implementation Guide Version 2017071, which was approved by the NCPDP on July 28, 2017 to provide for the communication of prescription or prescription-related information between prescribers and dispensers for the transactions for which prior versions of the NCPDP SCRIPT standard were adopted with old named transactions, and a handful of new transactions named at § 423.160(b)(2)(iv). (For more information, see the April 16, 2018 final rule titled ''Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program'' (83 FR 16635 through 16638) and for a detailed discussion of the regulatory history of e-prescribing standards see the November 28, 2017 proposed rule (82 FR 56437 and 56438).)

While not currently adopted as part of the Part D eRx standard, the NCPDP SCRIPT standard version 2017071 includes 4 transactions that would enable the prescribers to initiate medication ePA requests with Part D plan sponsors at the time of the patient's visit. These four transactions include: The PA initiation request/response, PA request/response, PA appeal request/response, and PA cancel request/response. As noted previously, historically we were unable to name the ePA transactions within the 2017071 standard as Part D e-prescribing program standards because the Part D program was previously required to adopt standards that were compatible with the HIPAA standards, and HIPAA covered entities are currently required to use the X12 278 to conduct referral certification and authorization transactions between health plans and health care providers.

II. Proposed Adoption of the NCPDP SCRIPT Standard Version 2017071 as the Part D ePA Transaction for the Part D Program

A. PA in the Part D Context

All Part D plans, as defined under § 423.4, including PDPs, MA–PDs, PACE Plans offering qualified prescription drug coverage, or Cost Plans offering qualified prescription drug coverage, can use approved PA processes to ensure appropriate prescribing and coverage of Part D-covered drugs prescribed to Part D-eligible individuals. We review all proposed PA criteria as part of the formulary review process. In framing our PA policies, we encourage PDP and MA–PD sponsors to consistently utilize PA for drugs prescribed for non-Part D covered uses and to ensure that Part D drugs are only prescribed when medically appropriate. Non-Part D covered uses may be indicated when the drug is frequently covered under Parts A or B as prescribed and dispensed or administered, is otherwise excluded from Part D coverage, or is used for a non-medically accepted indication. (See Medicare Prescription Drug Manual, chapter 6, section 30.2.2.3.) Part D sponsors must submit to CMS utilization management requirements applied at point of sale, including PA.

We may also approve PA for a drug when the Part D plan desires to manage drug utilization, such as when step therapy is required, or when it needs to establish whether the utilization is a continuation of existing treatment that should not be subject to the step therapy requirements, or to ensure that a drug is being used safely or in a cost-effective manner. Formulary management decisions must be based on scientific evidence and may also be based on pharmacoeconomic considerations that achieve appropriate, safe, and cost-effective drug therapy.

The PA process has historically been handled via facsimile exchange of information or telephone call, and only recently via payer-specific web portals. However, there is an overall consensus among stakeholders testifying to NCVHS that there is a need for real time PA at the prescriber level for electronic prescribing. Minutes from NCVHS meetings can be accessed at *https://ncvhs.hhs.gov/meetings-meeting/all-past-meetings/.* We believe this would improve patient access to required medications.

B. PA for Part D E-Prescribing

In order to meet the SUPPORT for Patients and Communities Act's mandate to adopt an ePA transaction standard for the Part D-covered drugs prescribed to Part D-eligible individuals, CMS identified ePA transaction standards currently in use by pharmacies and prescribers. These included the X12 278 and NCPDP Telecommunications D.0 standards, the NCPDP SCRIPT standard version 2017071, and earlier versions of the NCPDP SCRIPT standard. We quickly ruled out the use of older NCPDP SCRIPT standards based on our assessment of the enhanced functionality available in the NCPDP SCRIPT version 2017071.

We then considered the needs of the Part D program; the functionalities offered by the remaining two standards; NCVHS recommendations, stakeholder recommendations based on their experience developing, vetting, evaluating, revising, and using the standards constructed by the respective Standards Development Organizations (SDOs) including NCPDP, the burden on stakeholders to use the standard, the security offered by the standard; and the current EHR capabilities of the industry in order to estimate the potential burden each standard would impose if it were to be adopted in the Part D context. SDOs work to formulate health and safety standards based on guidelines, best practices, specifications, test methods, and/or designs.

The X12 278 and NCPDP Telecommunications D.0 are already used as the HIPAA standards for referral certification and PA for dental, professional and institutional transactions, and retail pharmacy drugs transactions, respectively. However, the NCPDP Telecommunications D.0 standard was designed to be a standard for insurance companies to approve claims and is only used in ''pharmacy to plan'' transactions, so it does not include all of the content fields that are relevant to ePA nor does it have the ability to transmit information in real time. We then considered the X12 278.

Based on review of NCPDP's testimony and the letters received from NCVHS, we found that the NCPDP and its participant organizations have concluded and presented to NCVHS via testimony at hearings that the X12 278 standard is not adequate to enable ePA in the e-prescribing context because it does not support ''real-time'' medication e-prescribing, meaning a prescriber seeking ePA during the patient encounter. This is due to the content logic of the standard, which does not have the technical capabilities to allow for next question logic, which allows the prescriber to determine medication alternatives and determine within minutes if the medication will be authorized or if a coverage determination is required. In addition, the fields, transaction messaging, software functioning are not standardized to include information relevant to ePA and contain mandatory questions that are unnecessary for medication PA. Unfortunately, prescribers are unable to customize these fields as needed for medication PA.

These findings are outlined in NCPDP's 2016 written testimony to NCVHS, which is available via this web link: *https://www.ncvhs.hhs.gov/wp-content/uploads/2016/01/Part-2-Attachments-NCPDP-WrittenOnly.pdf,* urging the exemption of medication transactions from the X12 278 transaction standard, and its May 24, 2017 recommendation to adopt the NCPDP SCRIPT Standard Version 2017071 for ePA transactions in the HIPAA context, with a 24 month implementation time period, due to the extensive coding required by Electronic Health Records (EHRs) and Part D plans to implement the change.

Although NCPDP's recommendation was to adopt this standard for all HIPAA transactions, the Department has not promulgated rulemaking on this point. Based on conversations with the industry, our own assessment of the standard, and under the authority provided by Congress to require the use of a standard for Part D ePA notwithstanding any other provision of law, we have concluded that the potential benefits of adopting user-friendly ePA for the Part D program outweigh any difficulties that may arise by virtue of Part D using a different standard than the rest of the industry.

More specifically the NCPDP SCRIPT standard will support an electronic version of today's PA process by providing standardized information fields that are relevant for medication use, mandatory questions, transaction messaging, and standardized ePA data elements and vocabulary words for exchanging the PA questions and answers between prescribers and payers, while also allowing the payers to customize the wording of the questions using free form fields. Although the X12 278 standard has standard information fields, mandatory questions, transaction messaging and standardized data element and values, we believe those fields are relevant only for DME use—and would not be conducive to medication ePA. Since the X12 278 does not allow payers to customize the wording of questions, it is difficult for parties to decide how to fill out the fields. The NCPDP SCRIPT Standard was designed to support medication ePA, the standard also supports features that minimize what the prescriber is asked, creating a customized experience based on earlier answers or data pulled using automated functions from their EHR system, which would reduce the amount of time a prescriber or their staff spend reviewing and responding to the PA questions We understand that this functionality works with most EHR systems, and can be customized based on what information is requested by the plans. It additionally supports software functions that allow for automation of the collection of data required for ePA consideration from data available within most EHR systems or other PA transaction fields.

Furthermore, unlike the X12 278, the NCPDP SCRIPT version 2017071 standard supports solicited and unsolicited models. A solicited model occurs when the prescriber notifies the payer that they wish to start the PA process to determine if an authorization is needed for the patient and their desired medication. The prescriber requests guidance as to what information will be required for an ePA request for a particular patient and medication. The payer then responds either with a description of the information required, or an indication that a PA is not required for that patient and medication. An unsolicited model can be used when the information generated in this first interchange of the solicited model is not required, where the prescriber presumes or knows that an authorization will be required based on past experience or other knowledge and they will submit the information they anticipate the payer needs.

We found that while X12 278 uses Electronic Data Interchange (EDI) syntax, the NCPDP SCRIPT standard version 2017071 uses XML syntax. XML helps ensure security of transactions through the encryption of personal

health information and through use of XML transaction processing. XML is a newer syntax that provides for an easier interaction between different formats and is more easily readable when system issues arise. By contrast, EDI is an older syntax more commonly used when there are few companies that conduct more standard interactions between each other.

Based on this evaluation of the candidate standards, coupled with the recommendations from NCPDP, CMS concluded that the NCPDP SCRIPT standard version 2017071 is the most appropriate standard to propose for the Part D e-prescribing program.

We recognize that this proposed rule would not change the ePA transaction standards that may be used outside of the Part D context. We do not believe that it will be problematic for plans to use one standard for Part D and another standard outside of Part D, if that is the case for the plan, because we believe that the industry is equipped to use different standards for different health plans and programs. We understand that based on our conversations with the industry, most EHRs are capable of generating transactions using more than one standard for a given transaction, and that they are programmed in a manner that would guide a prescriber to select the correct standard for a given transaction.

Finally, we considered whether adopting the NCPDP SCRIPT Standard version 2017071 for ePA would create any difficulties if an individual had multiple forms of drug coverage or wished to pay cash for their prescription. The SUPPORT for Patients and Communities Act specifies that the adopted standard shall be applicable for ePA of covered Part D drugs being prescribed to Part D-eligible individuals. The Act requires that the drug be a Part D-covered drug, and that the patient is Part D-eligible, but it stops short of requiring that the prescribed drug be paid for by the Part D plan. Thus, even if a prescriber were to use the SCRIPT ePA to seek part D PA, the beneficiary's right to pay for the drug him or herself, or to use non-Part D coverage to pay for the drug would be unaffected. However, we note, that the prescriber would not use the SCRIPT ePA to seek ePA with non-Part D plans. We expect that their EHR's eRx function would be capable of using the appropriate HIPAA standard to seek ePA outside of the Part D context. Furthermore, where a patient has both a Part D plan and a supplementary payer the SCRIPT ePA can be used to process the SCRIPT ePA transaction in real time, with the claims processing transactions made in the usual manner if/when the prescription is filled. Thus, we believe our proposal would not be overly burdensome for the prescriber, even if beneficiaries seek to use their non-Part D coverage.

While the prescriber can use the SCRIPT ePA for all covered Part D-covered drugs for Part D-eligible individuals, it should refrain from using the transaction if the patient were to specifically request that the Part D benefits not be accessed.

As a result of these observations and our understanding that most of the industry is able to support NCPDP SCRIPT standards for ePA using their current EHRs, we believe that requiring plans to support and prescribers to use the NCPDP SCRIPT 2017071 ePA transactions when prescribing Part D covered drugs when they are prescribed to Part D eligible individuals would not impose an undue administrative burden on prescribers or dispensers. Therefore, based on its real time capabilities and its inherent features designed to accommodate prescriptions, we believe that the NCPDP SCRIPT standard version 2017071, which includes the following ePA transaction capabilities, would be the best available option to support ePA between prescribers and payers for Part D covered drugs prescribed to Part D-eligible individuals:

- PAInitiationRequest and PAInitiationResponse
- PARequest and PAResponse
- PAAppealRequest and PAAppealResponse
- PACancelRequest and PACancelResponse.

If these ePA transaction proposals are finalized, they would enable the electronic presentation of ePA questions and responses using secure transactions.

The SUPPORT for Patients and Communities Act states that the Secretary must adopt, and a Part D sponsor's electronic prescription program must implement the adopted ePA by January 1, 2021. As of January 1, 2020, plans will already be required to use the NCPDP SCRIPT 2017071 standard for certain Part D specified transactions, so we believe that giving plans an additional year to add ePA to that list of other NCPDP SCRIPT 2017071 transactions would not be overly burdensome and help ensure that the SUPPORT for Patients and Communities Act is implemented.

We acknowledge that covered entities are required to use the X12 278 standard for ePA under HIPAA, which is different than the standard we are proposing. (See 45 CFR 162.1301.) However, the SUPPORT for Patients and Communities Act, allows us to propose the adoption of an ePA standard for Part D-covered drugs to Part D-eligible individuals notwithstanding any other provision of law. We believe that our proposal to adopt the NCPDP SCRIPT standard version 2017071 for ePA of Part D covered drugs prescribed to Part D eligible individuals is consistent with the statutory requirement to adopt technical standards for ePA transactions under the Act, which allows the Secretary to require use of standards in lieu of any other applicable standards for an electronic transmission of an ePA nothwithstanding any other provision of law.

Therefore, we propose to add § 423.160(b)(7) which would require that Part D plans be able to support the NCPDP SCRIPT ePA standard transactions included within version 2017071 beginning on January 1, 2021, and that prescribers use that standard when conducting ePA by the same date. The proposed ePA standard applies to the following list of ePA transactions:

- PAInitiationRequest and PAInitiationResponse
- PARequest and PAResponse
- PAAppealRequest and PAAppealResponse
- PACancelRequest and PACancelResponse

We welcome comments on the proposed adoption of the NCPDP SCRIPT standard version 2017071 eRx for these ePA transactions for Part D-covered drugs prescribed to Part D eligible individuals. We are also soliciting comments regarding the impact of these proposed transactions and the proposed effective date on industry and other interested stakeholders, including whether the implementation of a NCPDP SCRIPT standard version 2017071 ePA transaction standard for use by prescribers and plans in the Part D program would impose an additional burden on the industry as a whole. We would also be interested in hearing if implementation of the proposed transactions is a significant change for Part D sponsors which would make a January 1, 2021 implementation date as required by statute not be feasible. We also seek comment on strategies to mitigate burden in order to support successful adoption of this policy. Finally, we seek comment on any additional ways CMS can support plans as they transition to the ePA standard by the 2021 deadline.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*),

we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In this proposed rule we are soliciting public comment on each of these issues for the following sections of the rule that contain proposed ''collection of information'' requirements as defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

A. Proposed Information Collection Requirements (ICRs)

The following requirements and burden will be submitted to OMB for approval under control number 0938–0763 (CMS–R–262). Subject to renewal, the control number is currently set to expire on February 28, 2019. It was last approved on February 27, 2018, and remains active.

This rule proposes to implement section 6062 of the SUPPORT for Patients and Communities Act, which require the adoption of technical standards for the Part D e-prescribing program that will help ensure secure ePA requests and response transactions Specifically, the proposed rule would amend the Prescription Drug Benefit program (Part D) regulations to require under § 423.160(b)(7) that Part D plan sponsors (hereinafter, ''plans'') have the technical capability to support the National Council for Prescription Drug Programs (NCPDP) SCRIPT standard version 2017071 when performing electronic ePA for Part D-covered drugs prescribed to Part D-eligible individuals. While this proposed rule will not impact the PA criteria which Part D plans have in place, the electronic process will make the PA process less burdensome for plans and prescribers. Prescribers who are currently using an electronic prescribing software already have access to the ePA transactions and may generally access the proposed transactions without cost, since the eRx software includes all transactions within the NCPDP SCRIPT standard. As ePA is implemented the current system of manual processing (fax and phone calls) will be eliminated, since plans will be able to use this more appropriate standard.

We estimate a one-time cost for plans to implement the necessary changes to support the ePA transactions within NCPDP SCRIPT standard version 2017071. After consulting with industry stakeholders, we have concluded that implementing or building the type of logic which will allow systems engineers to produce the interactive logic which the SCRIPT standard requires can vary based on how the PA criteria are currently documented, but $100,000 is the approximate average cost. The cost varies based on the size and expertise of the plan. This figure includes only the plan's internal costs including labor, initial development and programming, and systems support to transform each of its CMS-approved PA criteria from a free flowing document suitable for implementation by a clinical professional into a step-by-step document that can be adapted for use by programmers. Based on our internal data, we estimate that there are 990 plans. We estimate that only 20 percent (or 198) of the plans (990 plans × 0.20) do not have the internal ePA process that would be required to build the logic into the NCPDP SCRIPT standard's ePA transactions. In that regard we estimate a one-time implementation cost of $19,800,000 (198 plans × $100,000/plan) or $6,600,000 annually when factoring in OMB's 3-year approval period ($19.8 million/3 years). We are annualizing the one-time estimate since we do not anticipate any additional burden after the 3-year approval period expires.

Based on our informal conversations with the industry, we believe that the ongoing cost that plans would incur to process ePA transactions range from $1.20 to $2.85 per transaction, which varies based on vendor and volume. Based on internal CMS data, for the 990 plans we estimate that 560,430 PAs are performed every year and that each authorization requires two individual transactions, one for receiving and one for responding. Using $2.03 as the average cost per transaction ([$1.20 + $2.85]/2) we estimate $4.06 per authorization ($2.03/transaction × 2 transactions/authorization). In aggregate we project an ongoing cost of $2,275,346 annually ($4.06/authorization × 560,430 authorizations) for all plans.

With regard to current practice, the remaining 80 percent (or 792) of the plans (990 plans × 0.80) already have an automated PA process in place. Our review of their cost data indicates that they spend an average of $10.00/fax PA for 448,344 authorizations (560,430 authorizations × 0.80) at a cost of $4,483,440 (448,344 PAs × $10.00/PA). The remaining 198 plans that rely on phone or fax and individual ePA review spend an average of $25.00/manual PA for 112,086 authorizations (560,430 authorizations × 0.20) at a cost of $2,802,150 (112,086 PAs × $25.00/PA). In this regard the transaction cost for the current practice is approximately $7,285,590 ($4,483,440 + $2,802,150).

Outside of the one-time implementation cost, the proposed changes to § 423.160(b)(7) would result in an annual savings of $5,010,244 to Part D plans ($7,285,590 current process − $2,275,346 proposed standard) for the ongoing PA requirements. When considering the one-time cost, we project an annual increase of $8,875,346 ($7,285,590 current process − $5,010,244 proposed standard savings + $6,600,000 one-time cost) for the first 3 years of OMB's approval period.

B. Submission of PRA-Related Comments

We have submitted a copy of this rule to OMB for its review of the rule's proposed information collection requirements and burden. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections previously discussed, please visit CMS's website at: *https://www.cms.gov/Regulations-andGuidance/Legislation/PaperworkReductionActof1995/PRAListing.html,* or call the Reports Clearance Office at (410) 786–1326.

We invite public comments on the proposed information collection requirements and burden. If you wish to comment, please submit your comments electronically as specified in the **DATES** and **ADDRESSES** sections of this proposed rule and identify the rule (CMS–4189–P) and where applicable the ICR's CFR citation, CMS ID number (CMS–R–262), and OMB control number (OMB 0938–0763).

IV. Regulatory Impact Statement

A. Statement of Need

This rule proposes to implement provisions of the SUPPORT for Patients and Communities Act, which require the adoption of transaction standards for the Part D program that will help ensure secure electronic PA request and response transactions. Specifically, the proposed rule would amend the Prescription Drug Benefit program (Part D) regulations to require that Part D

plans sponsors have the technical capability to support the National Council for Prescription Drug Programs (NCPDP) SCRIPT standard version 2017071 when performing electronic Prior Authorization (ePA) for Part D-covered drugs prescribed to Part D-eligible individuals.

B. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

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). A RIA must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million annually. Individuals and states are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. This rule would have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this rule does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

If regulations impose administrative costs on reviewers, such as the time needed to read and interpret this final rule, then we should estimate the cost associated with regulatory review. There are currently 750 MA contracts (which also includes PDPs), 50 State Medicaid Agencies, and 200 Medicaid Managed Care Organizations (1,000 reviewers total). We assume each entity will have one designated staff member who will review the entire rule. Other assumptions are possible and will be reviewed after the calculations.

Using the wage information from the Bureau of Labor Statistics (BLS) for medical and health service managers (code 11–9111), we estimate that the cost of reviewing this final rule is $107.38 per hour, including fringe benefits and overhead costs (*http://www.bls.gov/oes/current/oes_nat.htm*). Assuming an average reading speed, we estimate that it will take approximately 12.5 hours for each person to review this final rule. For each entity that reviews the rule, the estimated cost is therefore, $1,342 (12.5 hours × $107.38). Therefore, we estimate that the total cost of reviewing this final rule is $1,342,000 ($1,342 × 1,000 reviewers).

Note that this analysis assumed one reader per contract. Some alternatives include assuming one reader per parent entity. Using parent organizations instead of contracts will reduce the number of reviewers to approximately 500 (assuming approximately 250 parent organizations), and this will cut the total cost of reviewing in half. However, we believe it is likely that reviewing will be performed by contract. The argument for this is that a parent organization might have local reviewers; even if that parent organization has several contracts that might have a reader for each distinct geographic region, to be on the lookout for effects of provisions specific to that region.

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 (82 FR 9339, February 3, 2017). It has been determined that this rule does not impose more than a de minimis costs; and thus, is not a regulatory action for purposes of E.O. 13771.

C. Anticipated Effects

As stated in the previously, section 6062 of the SUPPORT for Patients and Communities Act requires the adoption of technical standards for the Part D program that will ensure secure ePA request and response transactions no later than January 1, 2021. We propose to codify requirements at § 423.160, which would require plans to support the National Council for Prescription Drug Programs (NCPDP) SCRIPT standard version 2017071 by January 1, 2021 when performing electronic ePA for Part D-covered drugs prescribed to Part D-eligible individuals. The proposed rule has the following impacts.

Entities affected by the PA processes include pharmacies receiving ePAs from providers and filling the prescription, prescribers who use ePA, the Medicare Part D Program, Part D plans, EHR vendors who need to modify their products, and the Promoting Interoperability Programs, for any Part D prescribers in these programs. Information about what programs are included in the Medicare Promoting Interoperability Programs is available via this web link: *https://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/index.html?redirect=/EHRincentiveprograms.*

There are three primary aspects of the provision that could affect its cost and the amount saved. The most immediate cost comes from the one-time implementation cost for the few EHR vendors who need to need to change their programming to use two standards; the NCPDP SCRIPT standard version 2017071 for Part D ePA and the HIPAA standard for other contexts. Based on

our conversations with EHR vendors, we believe that it would take the EHR vendors approximately 200 developing hours and 800 programming hours to enable the EHRs to utilize two standards.

We also estimated what it would cost plan sponsors to implement this proposed standard. After consulting with industry stakeholders, we have concluded that implementing or building to the SCRIPT standard can vary, but $100,000 is the approximate amount. We estimate that only 20 percent of the 750 plans would have to make changes to implement their ePA process to implement the SCRIPT ePA process standard, which gives us an approximate one time implementation cost of $15 million (0.2 * 750 * $100,000).

The ongoing cost for plans range from $1.20 to $2.85 per transaction, and vary based on vendor and volume. We estimate that 560,430 PAs are performed every year. If we estimate the average cost per transaction to be $2.03 and each PA requires two transactions, the ongoing cost of ePA would be approximately $2.27 million annually ($2.03 * 560,430 * 2).

The anticipated costs and how they compare to current costs are as follows:

	Plans without automated PA logic	Plans with automated PA processing logic	Total
Annual Maintenance Costs, Paper Process	$2,302,150.00	$3,683,440.00	$5,985,590.00
Annual Maintenance Costs, ePA Process			(2,275,345.80)
Projected Annual Savings			3,710,244.20

It should be noted that the $3,710,244 in cumulative plan savings would be reduced by $100,000 in the first year as plans that have not automated their PA logic move to do so.

We believe that the savings from this rule would be primarily derived from the reduction in time it takes to process a prior-authorization as discussed previously.

E. Alternatives Considered

The SUPPORT for Patients and Communities Act requires the adoption of technical standards by January 1, 2021. We had considered requiring the adoption of the standard by January 1, 2020. However, we want to help ensure that plans have as much time to comply with the statutory mandate as possible.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Health professionals, Medicare, Penalties, Privacy, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 423 as set forth below:

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 1. The authority citation for part 423 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395w–101 through 1395w–152, and 1395hh.

■ 2. Section 423.160 is amended by adding paragraph (b)(7) to read as follows:

§ 423.160 Standards for electronic prescribing.

* * * * *

(b) * * *

(7) *Electronic prior authorization.* Beginning January 1, 2021, Part D sponsors and prescribers must comply with the National Council for Prescription Drug Programs SCRIPT standard, Implementation Guide Version 2017071 approved July 28, 2017 (incorporated by reference in paragraph (c)(1)(vii) of this section), to provide for the communication of a prescription or related prescription-related information between prescribers and dispensers for the following transactions:

(i) PAInitiationRequest and PAInitiationResponse

(ii) PARequest and PAResponse

(iii) PAAppealRequest and PAAppealResponse

(iv) PACancelRequest and PACancelResponse

* * * * *

Dated: June 11, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 14, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–13028 Filed 6–17–19; 11:15 am]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 84, No. 118

Wednesday, June 19, 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

Submission for OMB Review; Comment Request

June 13, 2019.

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

Comments regarding this information collection received by July 18, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

National Institute of Food and Agriculture

Title: Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds.

OMB Control Number: 0524–0036.

Summary of Collection: Section 202 and 225 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) which requires that a plan of work must be submitted by each institution and approved by the National Institute of Food and Agriculture (NIFA) before formula funds may be provided to the 1862 and 1890 land-grant institutions. The plan of work must address critical agricultural issues in the State and describe the programs and project targeted to address these issues using the NIFA formula funds. The plan of work also must describe the institution's multistate activities as well as their integrated research and extension activities. NIFA is requesting to continue to collect an update to the 5-Year Plan of Work which began with the Fiscal Year 2007, and as a result no longer needs to collect the initial 5-Year Plan. Also, as required by the Food Conservation and Energy Act of 2008 (FCEA) (Pub. L. 110–246, Sec. 7505), NIFA is working with the university partners in extension and research to review and identify measures to streamline the submission, reporting under, and implementation of plan of work requirements.

Need and Use of the Information: Institutions are required to annually report to NIFA the following: (1) The actions taken to seek stakeholder input to encourage their participation; (2) a brief statement of the process used by the recipient institution to identify individuals or groups who are stakeholders and to collect input from them; and (3) a statement of how collected input was considered. NIFA uses the information to provide feedback to the institutions on their Plans of Work and Annual Reports of Accomplishments and Results in order for institutions to improve the conduct and the delivery of their programs.

Failure to comply with the requirements may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions.

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

Number of Respondents: 152.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 49,248.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–12904 Filed 6–18–19; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–05–2019]

Foreign-Trade Zone (FTZ) 93—Raleigh/Durham, North Carolina; Authorization of Production Activity; GlaxoSmithKline, PLC (Pharmaceutical Products), Zebulon, North Carolina

On February 13, 2019, GlaxoSmithKline, PLC, submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 93, in Zebulon, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 6128, February 26, 2019). On June 13, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: June 13, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–12990 Filed 6–18–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–818, C–552–819]

Certain Steel Nails From the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT) final judgment in this case is not in harmony with Commerce's final scope ruling. Commerce, therefore, is amending its final scope ruling and now finds that certain zinc and nylon anchors imported by Midwest Fastener Corp. (Midwest Fastener) are not within the scope of the antidumping and countervailing duty orders on certain steel nails from the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable June 13, 2019.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas at (202) 482–3813, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2016, Midwest Fastener, an importer of zinc and nylon anchors, filed a request with Commerce for a scope ruling that its zinc and nylon anchors should be excluded from the scope of the antidumping and countervailing duty *Orders* [1] on certain steel nails from Vietnam.[2] Midwest Fastener described the zinc and nylon anchors as a unitary article of commerce consisting of two parts: (1) A zinc alloy or nylon body; and (2) a zinc plated steel pin.[3]

On May 17, 2017, Commerce issued its Final Scope Ruling, in which it determined that Midwest Fastener's zinc and nylon anchors are unambiguously within the scope of the *Orders* based upon the plain meaning of the *Orders* and the description of the zinc and nylon anchors contained in Midwest Fastener's scope ruling request and supplemental questionnaire responses.[4] Commerce also found that several factors under 19 CFR 351.225(k)(1)—particularly the petition, the final determination of the International Trade Commission (ITC) issued in connection with the underlying investigation, and prior scope rulings—further supported Commerce's determination that Midwest Fastener's zinc and nylon anchors fall within the scope of the *Orders.*[5] As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue suspension of liquidation of entries of Midwest Fastener's zinc and nylon anchors.[6]

Midwest Fastener challenged the Final Scope Ruling before the CIT, and on October 1, 2018, the CIT remanded Commerce's scope ruling.[7] In its *Remand Order,* the CIT held that Midwest Fastener's zinc and nylon anchors, as unitary articles of commerce, are not a ''nail'' within the plain meaning of the word and are, therefore, outside the scope of the *Orders.*[8] The CIT relied on dictionary definitions to determine the definition of ''nail'' and concluded that, because Midwest Fastener's zinc and nylon anchors are a unitary article of commerce, the entire product, not just a component part, must fit the definition of a nail to fall within the scope of the *Orders.*[9] The CIT held that the entire zinc or nylon anchor is not a nail ''constructed of two or more pieces'' pursuant to the *Orders.*[10] Additionally, the CIT held that, because the relevant industry classifies anchors with a steel pin as anchors, not nails, trade usage further supports the conclusion that Midwest Fastener's zinc and nylon anchors are not nails.[11] In support of its conclusion, the CIT cited its decision in *OMG, Inc.* v. *United States,* in which it found a product with a zinc anchor body and a steel pin outside the scope of the *Orders.*[12]

The CIT remanded the Final Scope Ruling to Commerce for further consideration consistent with the CIT's opinion.[13] The CIT also directed Commerce to issue appropriate instructions to CBP regarding the suspension of liquidation of Midwest Fastener's zinc and nylon anchors.[14]

Pursuant to the CIT's instructions, on remand, under protest, Commerce found that Midwest Fastener's zinc and nylon anchors do not fall within the scope of the *Orders.*[15] On June 3, 2019, the CIT sustained Commerce's Final Remand Results.[16]

Timken Notice

In its decision in *Timken,*[17] as clarified by *Diamond Sawblades,*[18] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with Commerce's determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's June 3, 2019 judgment in this case, sustaining Commerce's decision in the Final Remand Results that Midwest Fastener's zinc and nylon anchors fall outside the scope of the *Orders,* constitutes a final decision of that court that is not in harmony with the Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of Midwest Fastener's zinc and nylon anchors pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, Commerce is amending its Final Scope Ruling and finds that the scope of the *Orders* does not cover the zinc and nylon anchors specified in Midwest

[1] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015); *Certain Steel Nails from the Socialist Republic of Vietnam: Countervailing Duty Order,* 80 FR 41006 (July 14, 2015) (collectively, the *Orders*).

[2] *See* Midwest Fastener's Letter, ''Certain Steel Nails from the Socialist Republic of Vietnam: Midwest Fastener Scope Request,'' dated November 9, 2016.

[3] *Id.* at 2, 3.

[4] *See* Antidumping and Countervailing Duty Orders on Certain Steel Nails from the Socialist Republic of Vietnam: Final Scope Ruling on Midwest Fastener Corp.'s Zinc and Nylon Anchors (Final Scope Ruling), dated May 17, 2017 at 11–13.

[5] *Id.* at 13.

[6] *See* Message Number 7153303, dated June 2, 2017; Message Number 7153302, dated June 2, 2017.

[7] *See Midwest Fastener Corp.* v. *United States,* Court No. 17–00131, Slip Op. 18–132 (CIT 2018) (*Remand Order*).

[8] *See Remand Order,* Slip Op. 18–132 at 14.

[9] *Id.* at 11.

[10] *Id.*

[11] *Id.* at 12–13.

[12] *Id.* at 13, citing *OMG, Inc.* v. *United States,* Court No. 17–00036, Slip Op. 18–63 (CIT 2018) at 10–11.

[13] *See Remand Order,* Slip Op. 18–132 at 14.

[14] *Id.*

[15] *See* Final Results of Redetermination Pursuant to Court Remand, *Midwest Fastener Corp.* v. *United States,* Court No. 17–00131, Slip Op. 18–132 (CIT October 1, 2018), dated December 21, 2018 (Final Remand Results).

[16] *See Midwest Fastener Corp.* v. *United States,* Court No. 17–00131, Slip Op. 19–66 (CIT 2019).

[17] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[18] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Fastener's Scope Ruling Request. Commerce will instruct CBP that the cash deposit rate will be zero percent for the zinc and nylon anchors subject to Midwest Fastener's scope ruling request. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of Midwest Fastener's zinc and nylon anchors without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(e)(1) of the Act.

Dated: June 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–12992 Filed 6–18–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–884]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Hyundai Steel Co., Ltd. (Hyundai Steel) and POSCO, producers and/or exporters of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea), received countervailable subsidies during the period of review (POR), August 12, 2016 through December 31, 2016.

DATES: Applicable June 19, 2019.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, 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) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 2018, Commerce published the *Preliminary Results* of this administrative review.[1] On December 18, 2018, Commerce postponed the final results of review by 58 days until May 3, 2019.[2] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[3] Accordingly, the revised deadline for these final results is June 12, 2019.

On March 4, 2019, Nucor Corporation (Nucor) submitted pre-verification comments on the record of this administrative review.[4] Between March 7, 2019 and March 12, 2019, we conducted verifications of the questionnaire responses submitted by Hyundai Steel Co., Ltd. (Hyundai Steel) and POSCO. We released verification reports on April 9, 2019.[5]

On April 19, 2019, Nucor, POSCO, and Hyundai Steel submitted timely case briefs.[6] Each also submitted timely rebuttal briefs on April 24, 2019.[7]

Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is certain hot-rolled steel flat products. For a complete description of the scope of the order, *see* attachment to the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' case briefs are addressed in the Issues and Decision Memorandum. The issues are identified in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties and information received from Hyundai Steel after the *Preliminary Results,* we made changes to the net subsidy rates calculated for the mandatory respondents. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates calculated for Hyundai Steel and POSCO were above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on a weighted-average of the subsidy rates calculated for Hyundai Steel and POSCO using publicly ranged sales data submitted by the respondents. This is consistent with the methodology that we would use in an investigation to establish the all-others rate, pursuant to section 705(c)(5)(A) of the Act.

Final Results of Administrative Review

We determine that, for the period of August 12, 2016 through December 31, 2016, the following total estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent ad valorem)
POSCO	0.55
Hyundai Steel Co., Ltd	0.58
DCE Inc	0.56
Dong Chuel America Inc	0.56
Dongbu Steel Co., Ltd	0.56
Dongkuk Industries Co., Ltd	0.56
Hyewon Sni Corporation (H.S.I.)	0.56
Soon Hong Trading Co., Ltd	0.56
Sung-A Steel Co., Ltd	0.56

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the

[1] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review,* 2016, 83 FR 55517 (November 6, 2018) (*Preliminary Results*), and accompanying Decision Memorandum (Preliminary Decision Memorandum).

[2] *See* Memorandum, ''Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated December 18, 2018.

[3] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Nucor's Letter, ''Pre-Verification Comments,'' dated March 4, 2019.

[5] *See* Memoranda, ''Verification of the Questionnaire Reponses of Hyundai Steel Company'' (April 9, 2019) (Hyundai Steel VR); ''Verification of Questionnaire Responses of POSCO, POSCO Daewoo Corporation, POSCO Chemtech, and POSCO M-Tech'' (April 9, 2019).

[6] *See* Nucor's Case Brief, ''Case Brief,'' dated April 19, 2019; *see also* POSCO's Case Brief, ''POSCO's Letter,'' dated April 19, 2019; Hyundai Steel's Case Brief, ''Hyundai Steel Case Brief,'' dated April 19, 2019.

[7] *See* Nucor's Rebuttal Brief, ''Rebuttal Brief,'' dated April 24, 2019; POSCO's Rebuttal Brief, ''POSCO's Letter,'' dated April 24, 2019; Hyundai Steel's Rebuttal Brief, ''Hyundai Steel Rebuttal Brief,'' dated April 24, 2019.

date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to 19 CFR 351.212(b)(2), Commerce intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of the final results of this review. We will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered, or withdrawn from warehouse for consumption, from August 12, 2016 through December 31, 2016, at the *ad valorem* rates listed above.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed in these final results will be equal to the subsidy rates established in the final results of this review; (2) for all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: June 11, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
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- Comment 1: Whether Commerce Should Apply Adverse Facts Available (AFA) for POSCO and Hyundai Steel's Failure to Retain AUL Records for Acquired Companies
- Comment 2: Whether POSCO Energy is POSCO's Cross-Owned Input Supplier
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- Comment 4: Which of POSCO's Reported Benchmark Loans to Use as Benchmarks for POSCO's KEXIM Loans
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- Comment 6: Whether to Use the GOK Short-Term Bond Interest Rate or IMF Statistic as a Short-Term Interest Rate Benchmark for POSCO's Short-Term KDB Loans
- Comment 7: Various Alleged Errors in the Preliminary Calculations for POSCO
- Comment 8: Whether Hyundai Green Power is Hyundai Steel's Cross-Owned Input Supplier
- Comment 9: Whether Commerce Should Countervail Benefits Received by SPP Yulchon Energy
- Comment 10: Whether Suncheon Harbor Usage Fee Exemptions Under the Harbor Act are Countervailable

IX. Recommendation

[FR Doc. 2019–12991 Filed 6–18–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG818

Takes of Marine Mammals Incidental To Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Target and Missile Launch Activities on San Nicolas Island, California

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, marine mammals during target and missile launch activities on San Nicolas Island (SNI), California for the Naval Air Warfare Center Weapons Division (NAWCWD), Point Mugu Sea Range (PMSR). The Navy's activity is considered a military readiness activity pursuant to MMPA, as amended by the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2004.

DATES: This Authorization is effective from June 12, 2019 through June 11, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are 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 for FY 2004 (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 activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On December 13, 2018, NMFS received a request from the Navy for an IHA to take marine mammals incidental to target and missile launch activities on SNI. The application was deemed adequate and complete on April 10, 2019. The Navy's requested take of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) by Level B harassment only. Neither the Navy nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS has previously issued incidental take authorizations to the Navy for similar launch activities since 2001 with the current authorization in effect until June 3, 2019 (79 FR 32678; June 6, 2014 and 79 FR 32919; June 9, 2014).

Description of the Specified Activity

The Navy plans to continue a target and missile launch program from two launch sites on SNI for testing and training activities associated with operations on the NAWCWD PMSR. SNI is one of the eight Channel Islands in the Southern California Bight, located about 105 kilometers (km) southwest of Point Mugu. The missiles are launched from one of several fixed locations on the western end of SNI. Missiles launched from SNI fly generally west, southwest, and northwest through the PMSR. The primary launch locations are the Alpha Launch Complex, located 190 meters (m) above sea level on the west-central part of SNI and the Building 807 Launch Complex, which accommodates several fixed and mobile launchers, at the western end of SNI at approximately 11 m above sea level. The Point Mugu airfield on the mainland, the airfield on SNI, and the target sites in the PMSR will be a routine part of launch operations.

Many of the beaches and rocky outcroppings around the perimeter of SNI are pinniped resting, molting, or breeding sites. The Alpha Launch Complex is approximately 2 km from the nearest beach where pinnipeds are known to routinely haul out. The Building 807 Launch Complex is 30 m from the nearest pinniped haulout.

Missiles vary from tactical and developmental weapons to target missiles used to test defensive strategies and other weapons systems. Some launch events involve a single missile, while others involve the launch of multiple missiles in quick succession. The Navy could conduct up to 40 missile launch events from SNI, but the total may be less than 40 depending on operational requirements. Launch timing will be determined by operational, meteorological, and logistical factors. Up to 10 of the 40 launches may occur at night, but this is also dependent on operational requirements and only conducted when required by test objectives. Airborne sound from these launch events may result in take of pinnipeds that are hauled out on SNI, by Level B harassment only. All flights over SNI would be subsonic; therefore, there would be no sonic booms that could affect pinnipeds hauled out at sites on SNI.

Missiles are rocket-propelled weapons designed to deliver an explosive warhead with accuracy at high speed. Missiles vary from small tactical weapons that are effective out to only a few hundred feet to much larger strategic weapons that have ranges of several thousand miles. Almost all missiles contain some form of guidance and control mechanism and are therefore often referred to as guided missiles. Guided missiles have four system components: Targeting or missile guidance, flight system, engine, and warhead. A guided missile powered along a low, level flight path by an air-breathing jet engine is called a cruise missile. An unguided military missile, as well as any launch vehicle, is usually referred to as a rocket. Tactical guided missiles are generally categorized according to the location of the launch platform and target and include: Air-to-air, air-to-surface, surface-to-air, anti-ship, and anti-tank (or assault).

Further details of the Navy's launch activities are provided in the **Federal Register** notice for the proposed IHA (84 FR 18809; May 2, 2019).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to the Navy was published in the **Federal Register** on May 2, 2019 (84 FR 18809). That notice described, in detail, the Navy's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). For full details of the Commission's comments, please see their letter, which is available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*. Summaries of the Commission's comments, and our responses, are provided below.

In-Air Thresholds

Comment: The Commission comments on many aspects of this IHA related to in-air thresholds. The Commission claimed that the thresholds for TTS/PTS stipulated in the Navy's *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) Technical Report* (U.S. Department of the Navy, 2017) were incorrect and that revised thresholds presented in Southall *et al.,* 2019 should be used. The Commission comments that the historical behavioral thresholds of 90 dB SPL for harbor seals/100 dB SPL for all other pinnipeds are what should be used for this IHA rather than the proposed 100 dB SEL value for all pinnipeds.

Response: Upon review of the Commission's comments and the two sets of thresholds, as well as additional communication with the authors of Southall *et al.,* 2019, we have determined that the Navy's thresholds in *the Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) Technical Report* (U.S. Department of the Navy, 2017) for TTS/PTS are correct and, in fact, errors have been found in Southall *et al.,* 2019. (The authors plan to address these errors in the publication). In addition, the issues the Commission points out regarding in-air behavioral thresholds are not applicable, as the estimated takes are based on the last three years of pinniped observation from Navy's monitoring reports and not directly based on specific in-air thresholds. The beaches that the Navy surveys are largely based on where sound received is expected to reach 100 dB SEL or greater and where animals are reacting

to launch noises. In the case of harbor seals, the Navy is already monitoring beaches where sound levels are less than 100 dB SEL and often under 90 dB SPL (site O—Phoca Reef and Pirates Cove). The Navy is monitoring at site O because oftentimes the harbor seals are not hauled out on the western end of SNI on the typically monitored beaches during launch events. The Navy is cognizant of the fact that some harbor seals are reacting to sound levels lower than 90 dB SPL. Accordingly, the Navy is monitoring those pinnipeds and requesting additional take by Level B harassment to account for this potential (see *Estimated Take* section).

In addition, the Navy has previously surveyed other parts of SNI to determine if pinnipeds are reacting in response to launch events. The Navy conducted surveys of the eastern end of SNI and did not find pinnipeds reacting to launch events. The Navy has also conducted surveys on adjacent beaches to those that are typically monitored and did not find pinnipeds that reacted to launch events (*e.g.,* Coast Guard Beach in the Navy's 2015 monitoring report).

In summary, upon review of new information suggested by the Commission, the TTS/PTS thresholds originally proposed for use remain the best available scientific information. We also believe that the behavioral threshold proposed for use in this context is appropriate; however, the specific threshold discussed is of less importance here because the actual amount of authorized takes by Level B harassment are based on actual field monitoring conducted by the Navy of the pinniped haulout areas that could potentially be affected by noise form launch events.

Level B Harassment Takes

Comment: The Commission recommends that NMFS use its standard tiered scale for determining when disturbance of hauled pinnipeds equates to Level B harassment for all activities, *i.e.,* based on animals moving at least two body lengths rather than animals moving at least 10 m, as was proposed for the Navy's launch activities at SNI.

Response: The Navy's activities are considered military readiness activities, for which a different definition of Level B harassment is applied. 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 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). The Navy has developed a slightly different version of the criteria for determining when behavioral response of a hauled pinniped rises to the level of harassment, as is appropriate for use with the definition of Level B harassment associated with military readiness activities. NMFS has determined that this version, which has been used in prior incidental take authorizations associated with launch activities on SNI (79 FR 32678; June 6, 2014), is appropriate for evaluating Level B harassment in association with this specified activity. NMFS may re-evaluate these criteria with the Navy for any subsequent applications we receive from for these activities.

Comment: The Commission comments that previous Navy monitoring reports from 2014–17 have indicated that for all but one launch 100 percent of the hauled out harbor seals within the view of the monitoring camera responded to the launch and, because of this, NMFS's presumption that only 2.39 harbor seals are taken per launch is an underestimate.

Response: In general, in recent years, few harbor seals have been observed during launch events. NMFS' take estimate of 3 (rounded from 2.39) harbor seals per launch is an average of animals taken during the 2015–2017 monitoring seasons. The average was calculated from the Navy's total of taken harbor seals during each launch. Using observations to determine a take estimate, especially in cases where so few numbers of harbor seals were present, is an appropriate use of available data. This average take estimate per launch is not the authorized value for a single launch event. The number of authorized launch events (40) is multiplied by 3 harbor seals (2.39 harbor seals conservatively rounded up) to obtain a take estimate of 120 instances of take for harbor seals by Level B harassment which can be distributed in varying ways across the total number of launch events.

There have been cases where the Navy observed harbor seals outside of the field of view in the camera and assumed they were taken by the launch. In the 2014 monitoring report, the Navy considered all 40 harbor seals observed as taken during a launch event even though they were not in the view of the camera during the launch, but observed during the visual count before the launch. Had NMFS used these 2014 monitoring results in its calculations, then we would have also considered these animals as taken even though they were not in the view of the camera. NMFS did not use this year in its take calculations because harbor seals have not been observed in this area during launch events over the last three years.

Comment: The Commission commented that NMFS did not authorize enough take for pinnipeds based on a variety of factors including the following: (1) The Commission assumes a 100-percent response rate (for harbor seals); (2) the Commission states that additional animals outside the regularly monitored areas should be assumed to be taken (harbor seals); and (3) the Commission's recommendation to use NMFS's non-military readiness pinniped disturbance criteria rather than the military readiness disturbance criteria developed by the Navy. The Commission recommends that NMFS authorize additional Level B harassment takes for all species.

Response: For harbor seals, NMFS believes the amount of Level B harassment takes suggested as appropriate by the Commission would be an overestimate based on previous observations during Navy's launch events. Before the launch events, the Navy monitors several sites around the western end of SNI to determine where pinnipeds are hauled out and what species are on the beaches. During this pre-launch monitoring, harbor seals are frequently not present. That said, NMFS understands the Commission's concerns, but taking a peak count in July and applying it over the entire year for every launch is not reasonable. To account for the possibility of some harbor seals hauling out and then reacting to a launch in a way equivalent to a take, NMFS has adjusted the take estimate from 120 to 480 harbor seals. Instead of taking an average per launch, the revised take estimate is developed by taking the total number of takes (12) and multiplying that by 40 launch events for a total of 480 instances of take by Level B harassment for harbor seals. NMFS believes that the number of authorized take is adequate and sufficient for California sea lions and elephant seals. These are based on animals taken by Level B harassment per the Navy's monitoring reports from 2015–2017.

Mitigation and Monitoring Measures

Comment: The Commission commented on a mitigation measure that was in the Navy's application, but not included in the proposed IHA. The mitigation measure required that the Navy avoid launching multiple missiles

in quick succession over haulout sites, especially when young pups are present. The Commission recommends that NMFS require the Navy to avoid launching multiple missiles in quick succession over haulout sites, especially when young pups are present as this mitigation measure was previously required in prior incidental take authorizations for this activity.

Response: Before the proposed IHA was published, the Navy indicated that it could not fulfill the mitigation measure and had mistakenly included the measure its application. The Navy indicated that it is already limiting or avoiding launches during much of the year during the pupping season for pinnipeds and could not be limited further due to practicability and mission objectives. Therefore, the mitigation measure was not included in the proposed IHA.

Comment: The Commission commented that NMFS (1) enlist its technical experts to review the proposed acoustic monitoring plan, including the relevant metrics and thresholds to report, (2) require the Navy to revise the plan as necessary based on that review, and (3) require the Navy, in the final authorization, to collect and report its acoustic measurements consistent with any revisions.

Response: NMFS reviewed the acoustic monitoring plan and clarified a few items in the Navy's application. In the final IHA, the Navy is required to conduct acoustic monitoring according to this slightly modified.

NMFS IHA Renewal Process

Comment: The Commission questioned whether the public notice provisions for IHA Renewals fully satisfy the public notice and comment provision in the MMPA and discussed the potential burden on reviewers of reviewing key documents and developing comments quickly. Additionally, the Commission recommended that NMFS use the IHA Renewal process sparingly and selectively for activities expected to have the lowest levels of impacts to marine mammals and that require less complex analysis.

Response: NMFS has taken a number of steps to ensure the public has adequate notice, time, and information to be able to comment effectively on IHA Renewals within the limitations of processing IHA applications efficiently. The **Federal Register** notice for the initial proposed IHA (84 FR 18809; May 2, 2019) previously identified the conditions under which a one-year Renewal IHA might be appropriate. This information is presented in the Request for Public Comments section of the initial proposed IHA and thus encourages submission of comments on the potential of a 1-year renewal as well as the initial IHA during the 30-day comment period. In addition, when we receive an application for a Renewal IHA, we publish a notice of the proposed IHA Renewal in the **Federal Register** and provide an additional 15 days for public comment, for a total of 45 days of public comment. We will also directly contact all commenters on the initial IHA by email, phone, or, if the commenter did not provide email or phone information, by postal service to provide them the opportunity to submit any additional comments on the proposed Renewal IHA.

NMFS also strives to ensure the public has access to key information needed to submit comments on a proposed IHA, whether an initial IHA or a Renewal IHA. The agency's website includes information for all projects under consideration, including the application, references, and other supporting documents. Each **Federal Register** notice also includes contact information in the event a commenter has questions or cannot find the information they seek.

Regarding the Commission's comment that Renewal IHAs should be limited to certain types of projects, NMFS has explained on its website and in individual **Federal Register** notices that Renewal IHAs are appropriate where the continuing activities are identical, nearly identical, or a subset of the activities for which the initial 30-day comment period applied. Where the commenter has likely already reviewed and commented on the initial proposed IHA for these activities, the abbreviated additional comment period is sufficient for consideration of the results of the preliminary monitoring report and new information (if any) from the past year.

Adequate Opportunity To Consider Public Comments

Comment: The Commission claims that NMFS did not have sufficient time to review public comments or to revise the proposed IHA accordingly. The Commission recommended that NMFS (1) delay issuance of the Final IHA until it has thoroughly reviewed and assessed the Commission's recommendations and any comments from the public and revised the authorization accordingly and (2) take all steps necessary in the future to ensure that it publishes and finalizes IHAs far enough in advance of the planned start date of the proposed activities to ensure full consideration is given to comments received.

Response: NMFS thanks the Commission for its concerns regarding the IHA process. NMFS had sufficient time and we thoroughly reviewed the comments received. We made all appropriate revisions to the final IHA.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the Navy's 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 (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 below lists all species with expected potential for occurrence in the project area 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' 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. Pacific and Alaska SARs (Carretta *et al.,* 2018). All values presented in Table 1 are the most recent available at the time of publication (draft SARs available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-*

marine-mammal-stock-assessment-reports).

Marine mammal species likelihood of occurrence (designated as ''unlikely,'' ''potential'' or ''likely'') was determined through review of NMFS SARs, species-specific literature research, and SNI monitoring reports (Table 1). ''Unlikely'' means occurrence is not expected, ''potential'' means the species may occur or there is casual occurrence history, and ''likely'' means there is a strong possibility of or regular occurrence in the project area.

TABLE 1—MARINE MAMMALS OCCURRENCE IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]	Occurrence
Order Carnivora—Superfamily Pinnipedia							
Family Otariidae (eared seals and sea lions):							
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014)	14, 011	≥319	Likely.
Northern Fur Seal	*Callorhinus ursinus*	CA	-, D, N	14,050 (N/A, 7,524, 2013)	451	1.8	Potential.
Steller Sea Lion	*Eumetopias jubatus*	Eastern	T, D, Y	41,638 (see SAR, 41,638, 2015).	2,498	108	Unlikely.
Guadalupe Fur Seal	*Arctocephalus philippii townsendi.*	Mexico	T, D, Y	20,000 (N/A, 15,830, 2010)	542	≥3.2	Potential.
Family Phocidae (earless seals):							
Harbor Seal	*Phoca vitulina*	CA	-, -, N	30,968 (N/A, 27,348, 2012)	1,641	43	Likely.
Northern Elephant Seal	*Mirounga angustirostris*	CA Breeding	-, -, N	179,000 (N/A, 81,368, 2010)	4,882	8.8	Likely.

[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/draft-marine-mammal-stock-assessment-reports.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Note: Italicized species are not expected to be taken or are authorized.

A detailed description of the species likely to be affected by the Navy's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (84 FR 18809; May 2, 2019); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Distribution of California sea lions, harbor seals, and harbor seals on SNI, as well as on the other Channel Islands, was conducted during the NMFS' Southwest Fisheries Science Center (SWFSC) July 2011–2015 survey. In 1987, the SWFSC began using aerial photography at the Channel Islands to census pinnipeds. Years later, the survey expanded to include all the Channel Islands in aerial surveys). July surveys are intended to census California sea lions after all pups have been born to monitor population trends and abundance of the U.S. population and to collect summer residence count-data for northern elephant seals and harbor seals (Lowry *et al.,* 20187b). The perimeter of SNI was divided into small area-coded units to describe intra-island distribution of pinnipeds as shown in Figure 1 below. We include Figure 1 here as a reference when describing some of the census data by Lowry *et al.* (2017b) in the *Estimated Take* section, to describe what areas may be impacted by launch events and where the Navy is monitoring pinnipeds.

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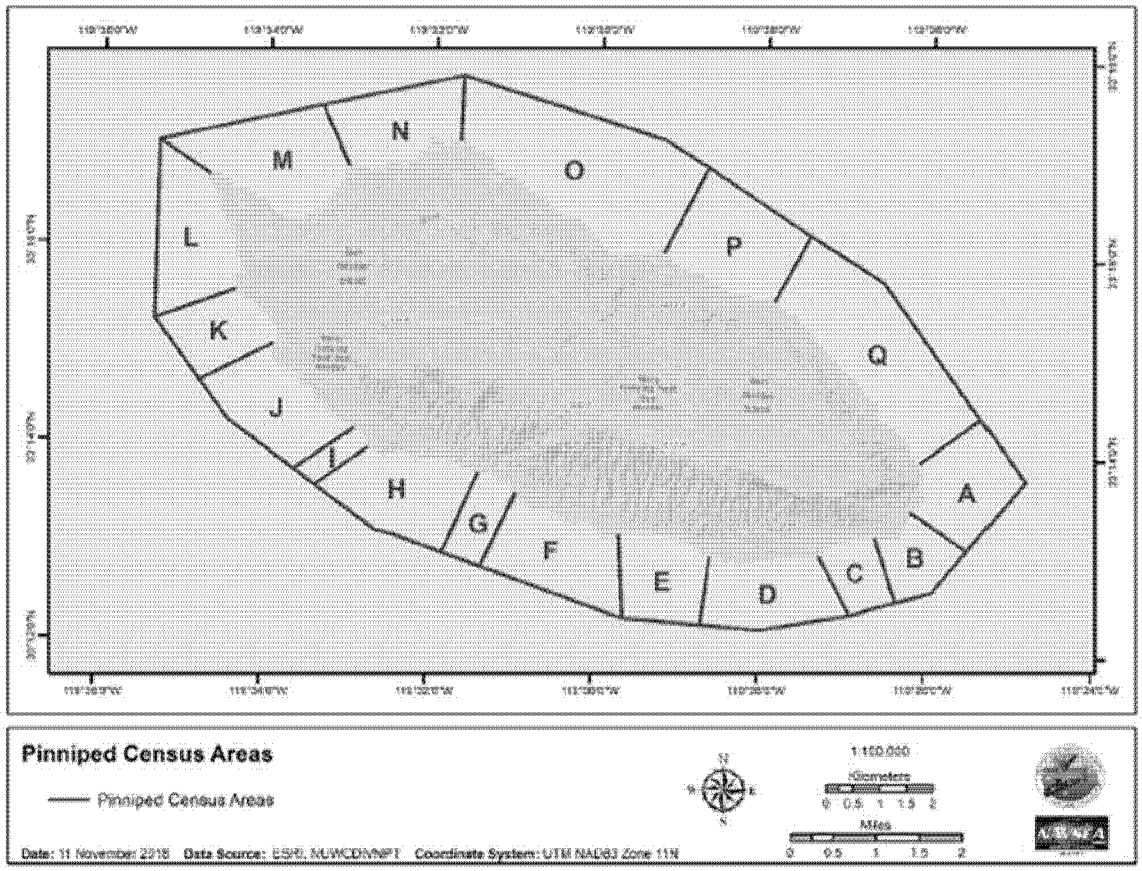

Figure 1. Census and Monitoring Areas on SNI associated with the July 2011-2015 pinniped survey of the Channel Islands (Lowry *et al.*, 2017b).

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Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Acoustic effects on marine mammals during the specified activity can occur from target and missile launch activities. The effects of airborne noise from the Navy's planned activities have the potential to result in Level B harassment of pinnipeds hauled out on SNI, which could cause a disruption of natural behavioral patterns such as flushing into the water. The **Federal Register** notice for the proposed IHA (84 FR 18809; May 2, 2019) included a discussion of the effects of anthropogenic noise on marine mammals; therefore, that information is not repeated here.

Impacts on marine mammal habitat are part of the consideration in making a finding of negligible impact on the species and stocks of marine mammals. Habitat includes, but is not necessarily limited to, rookeries, mating grounds, feeding areas, and areas of similar significance. We do not anticipate that the planned operations would result in any temporary or permanent effects on the habitats used by the marine mammals on SNI, including the food sources they use (*i.e.,* fish and invertebrates). While it is anticipated that the activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals. Overall, the launch activities are not expected to cause significant impacts or have permanent, adverse effects on pinniped habitats or on their foraging habitats and prey. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (84 FR 18809; May 2, 2019), therefore that information is not repeated here.

Estimated Take

This section provides an estimate of the number of incidental takes for authorization through this IHA, which will inform NMFS' negligible impact determination.

Harassment is the only type of take expected to result from these activities. For this military readiness activity, the MMPA defines ''harassment'' as (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns (and/or TTS, although only some missile launches have exceeded the level at

which TTS onset might occur, particularly for phocids) for individual marine mammals resulting from exposure to airborne sounds from rocket and missile launch. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area 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 authorized take estimate.

Acoustic Thresholds

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. Generally, for in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20 μPa (rms) will be behaviorally harassed, and other pinnipeds will be harassed when exposed above 100 dB re 20 μPa (rms). However, more recent data suggest that pinnipeds will be harassed when exposure is above 100 dB SEL (unweighted) (*Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) Technical Report* (U.S. Department of the Navy, 2017). NMFS previously helped develop the Phase III criteria and has determined that the criteria and thresholds shown in Table 2 are appropriate to determine when Level B harassment by behavioral disturbance may occur as a result of exposure to airborne sound on SNI. This behavioral disturbance criterion was used to determine the areas that the Navy should monitor based on the sound levels recorded at the pinniped haulouts during launch events. This criterion is not being used to directly estimate the take, rather to assume areas within which pinnipeds hauled out on particular beaches may be harassed (based on the previous acoustic monitoring).

TABLE 2—BEHAVIORAL THRESHOLD FOR IMPULSIVE SOUND FOR PINNIPEDS

Species	Level B harassment by behavior disturbance threshold
All pinniped species (in-air)	100 dB re 20 μPa2s SEL (unweighted).

Thresholds have also been developed identifying the received level of in-air sound for the onset of TTS (no PTS is anticipated to occur) for pinnipeds and discussed previously in this document (U.S. Department of the Navy, 2017). The TTS/PTS threshold for pinnipeds (in-air) are repeated here (see Table 3 below).

TABLE 3—TTS/PTS THRESHOLDS FOR PINNIPEDS

[In-air]

Group	Non-impulsive			Impulsive		
	TTS threshold SEL [a] (weighted)	PTS threshold SEL [a] (weighted)	TTS threshold SEL [a] (weighted)	TTS threshold Peak SPL [b] (unweighted)	PTS threshold SEL [b] (weighted)	PTS threshold Peak SPL [b] (unweighted)
OA [c]	157	177	146	170	161	176
PA [d]	134	154	123	155	138	161

[a] SEL thresholds are in dB re(20μPa)^2·s.
[b] SPL thresholds in dB 20μPa in air.
[c] OA-Otariid in air (California sea lion).
[d] PA-Phocid in air (harbor seal, northern elephant seal).

Ensonified Area

In-air sound propagation from missile launch sources at SNI had not been well studied prior to monitoring work during 2001–2007. During the 2001–2017 period, the strongest sounds originating from a missile in flight over the beaches at SNI were produced by Vandal (no longer launched from SNI) and Coyote launches, with the exception of one SM–2 launched in 2015 (see Table 6–3 of the application, but also Table 4 below). The range of sound levels recorded on SNI during Coyote launches were 128 dB re 20 μPa2·s SEL– (115 dB SEL–A, 123 dB SEL–Mpa) closest to the launcher and ranged from 87 to 119 dB re 20 μPa2·s SEL-f (46 to 107 dB SEL–A, 60 to 114 dB SEL-Mpa weighted) at nearshore locations. These values demonstrate that the sound levels are high enough to cause disturbance based on the behavioral thresholds (Table 2), but below the TTS thresholds (Table 3) during Coyote launches (most frequently launched missile on SNI). For additional information on sound levels please refer to the application.

Coyotes are launched from the inland Alpha Launch Complex so there would be no pinnipeds near the launcher. The pinnipeds closest to the Coyote launches are on the beaches (areas L and M) directly below the flight trajectory, for which the CPA distance is about 0.9 km. Stronger sounds were also recorded

at the launcher, but sound levels were dependent on the size of the missile launched. Launches of smaller missiles typically occur from the Building 807 Complex near the beach where the closest pinniped haulouts (area L and portions of K) are located about 0.3 km from the CPA. Harbor seal haulouts (areas L and J) are located at least 1 km from the CPA from the Building 807 Complex. It is important to note that in recent years, harbor seals are not always present when Navy conducts their monitoring during launch events, and there have not been many places to observe harbor seals during the launches. There is not a constant occupation of harbor seals on haulouts and occupation is dependent on tides. Harbor seals tend to be more sensitive to visual cues as well and do not prefer beaches with California sea lions. Most of the beaches where harbor seals are hauled out, and which Navy has been able to monitor, occur in area O which is north of both the Alpha Launch Complex and Building 307 Complex and not in the trajectory of launches that occur from these sites.

The Navy will continue to conduct marine mammal and acoustic measurements during every launch event at three pinniped sites per launch event within areas K, L, M or O. As an example in 2017, the Navy conducted acoustic and marine mammal monitoring during their launch events at beaches with hauled out pinnipeds (see Navy's Table 2.2 from the 2017 monitoring report) in areas M and L (beaches of Dos Cove and Redeye Beach) and in area O (beaches of Pirates Cove and Phoca Reef).

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Some pinnipeds that haul out on the western end of SNI are expected to be within the area where noise from launches exceeds 100 dB SEL. However, it is likely that far fewer pinnipeds occur within the area where sounds from smaller launch missiles, such as the BQM missiles, reach above 100 dB SEL and none of the recorded SELs appear to be sufficiently strong to induce TTS. Previous monitoring during 2001–2017 showed that SELs above 100 dB re 20 $\mu Pa^2 \cdot s$ were measured in pinniped areas K, L, and M (Cormorant Rock to Red Eye Beach); therefore, these are the areas that the Navy focuses their marine mammal monitoring on. In more recent years, Navy started monitoring area O (Phoca Reef and Pirates Cove) as harbor seals are hauling out here now and not as frequently in areas K, L, and M. Refer to Figure 1 for a map of these areas.

California Sea Lions

During the July 2011–2015 census, California sea lion counts on SNI averaged 52,634.8 individuals per year (SD = 9,899.0) (Lowry *et al.,* 2017b). Between 2001 and 2017, a maximum of 2,807 instances of take of California sea lions by Level B harassment were estimated to have been potentially harassed in a single monitoring year incidental to missile launches at SNI (Burke 2017; Holst *et al.* 2010; Holst *et al.* 2008; Holst *et al.* 2011; Ugoretz 2016; Ugoretz and Greene Jr. 2012). From the 2015–2017 monitoring seasons, there was a total of 4,940 instances of take of California sea lions by Level B harassment (702 sea lions in 2017, 1431 sea lions in 2016, and 2,807 sea lions in 2015) over 18 launches. Of these results, an average of 274.44 instances of take of sea lions by Level B harassment per launch occurred.

Harbor Seals

During the July 2011–2015 census, in July 2015 when all the Channel Islands were surveyed for harbor seals, 259 seals were counted at SNI (18.9 percent) (Lowry *et al.,* 2017b). Harbor seals are not uniformly distributed around the perimeter of SNI. During the July 2011–2015 census most harbor seals were mostly found in areas L, N, and Q on SNI (see Figure 1 for a map of these areas). However, in recent years, the Navy has indicated that harbor seals are mostly found and monitored in area O, just north of the launch azimuths on the northern side of the island so that is where they conduct their acoustic and marine mammal monitoring for harbor seals. Between 2001 and 2017, a maximum of 31 instances of take of harbor seals by Level B harassment were estimated in a single monitoring year incidental to missile launches at SNI (Burke 2017; Holst *et al.* 2010; Holst *et al.* 2008; Holst *et al.* 2011; Ugoretz 2016; Ugoretz and Greene Jr. 2012). From the 2015–2017 monitoring seasons, a total of 43 instances of take of harbor seals (8 in 2017, 4 in 2016, and 31 in 2015) by Level B harassment occurred over 18 total launches. Of these results, an average of 2.39 instances of take of harbor seals by Level B harassment per launch occurred. These harbor seals were mostly observed in area O (Phoca Reef and Pirates Cove).

Northern Elephant Seals

During the July 2011–2015 census, in 2015, when all islands were surveyed for elephant seals, 932 elephant seals were found on SNI (20.5 percent of total). Northern elephant seals were not uniformly distributed around the perimeter of SNI. Area K at SNI had the most elephant seals on island (Lowry *et al.,* 2017b). From the 2015–2017 monitoring seasons, a total of 11 instances of take of elephant seals by Level B harassment occurred (0 in 2017, 1 in 2016, 10 in 2015) of the 100 animals that were observed. Overall, from the 2015–2017 monitoring seasons, 11 instances of take of northern elephant seals by Level B harassment occurred over 18 launch events for an average of 0.61 per launch event.

Take Calculation and Estimation

The NDAA (Pub. L. 103–136) 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).

It is difficult to derive unequivocal criteria to identify situations in which launch sounds are expected to cause significant disturbance responses to pinnipeds hauled out on SNI. One or more pinnipeds blinking its eyes, lifting or turning its head, or moving a few feet along the beach as a result of a human activity is not considered a ''take'' under the MMPA definition of harassment. Therefore, the criteria used by the Navy to determine if an animal is affected by a launch event and is taken by Level B harassment is as follows:

1. Pinnipeds that are exposed to launch sounds strong enough to cause TTS; or

2. Pinnipeds that leave the haulout site, or exhibit prolonged movement (>10 m) or prolonged behavioral changes (such as pups separated from mothers) relative to their behavior immediately prior to the launch.

Here we describe how the information provided above is brought together to produce a quantitative take estimate. Previously, take estimates were calculated based on areas ensonified above the behavioral disturbance criterion and the estimated numbers of

pinnipeds exposed to at or above that level. However, for this IHA we rely on the past three seasons of monitoring of pinnipeds to determine the take estimate.

For California sea lions, take estimates were derived from three monitoring seasons (2015 to 2017) where an average of 274.44 instances of take of sea lions by Level B harassment occurred per launch event. Therefore, 275 sea lions was then multiplied by 40 launch events, for a conservative take estimate of 11,000 instances of take for California sea lions by Level B harassment (Table 4). This estimate is conservative because the Navy has not conducted more than 25 launch events (although authorized for more) in a given year since 2001.

For harbor seals, this take estimate is a change from the proposed IHA (84 FR 18809; May 2, 2019). The take estimate was revised from 120 to 480 harbor seal instances of take by Level B harassment. A total of 12 takes were derived from the 2016 and 2017 monitoring seasons and multiplied by 40 launch events for a total of 480 instances of take by Level B harassment (Table 4).

For northern elephant seals, take estimates were derived from three monitoring seasons (2015 to 2017) where an average of 0.61 instances of take of northern elephant seals by Level B harassment occurred per launch event. Therefore, one northern elephant seal was then multiplied by 40 launch events for a conservative take estimate of 40 instances of take of northern elephant seals by Level B harassment (Table 4). Generally, northern elephant seals do not react to launch events other than simple alerting responses such as raising their heads or temporarily going from sleeping to being awake; however, to account for the rare instances where they have reacted, the Navy considered that some northern elephant seals that could be taken during launch events.

TABLE 4—AUTHORIZED LEVEL B HARASSMENT TAKE ESTIMATES FOR PINNIPEDS ON SNI

Species	Authorized Level B harassment	Stock abundance (percent taken by Level B harassment)
California sea lion	11,000	257,606 (4.27 percent).
Harbor seal	480	30,968 (less than 2 percent).
Northern elephant seal	40	179,000 (less than 1 percent).

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)). The NDAA for FY 2004 (Pub. L. 108–136) amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

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.

Personnel Mitigation

Personnel will not enter pinniped haulouts. Personnel will be adjacent to pinniped haulouts below the predicted missile path for two hours prior to a launch only for monitoring purposes.

Launch Mitigation

Missiles will not cross over pinniped haulouts at elevations less than 305 m (1,000 ft). Launches at night will be limited. Launches will be avoided during harbor seal pupping season (February through April) unless constrained by mission objectives. Launches will be limited during the pupping season for northern elephant seal (January through February) and California sea lion (June through July) unless constrained by mission objectives or certain other factors. It is vital that the Navy effectively executes readiness activities to ensure naval forces can effectively execute military operations. The ability to schedule and locate training and testing without excessively burdensome restrictions within the Study Area is crucial to ensure those activities are practical, effective, and safe to execute. To meet its military readiness requirements (mission objectives), the Navy requires consistent access to a variety of realistic, tactically-relevant oceanographic and environmental conditions (*e.g.,* bathymetry, topography, surface fronts, and variations in sea surface temperature), and sea space and airspace that is large enough or situated in a way that allows activities to be completed without physical or logistical obstructions, in order to achieve the highest skill proficiency and most accurate testing results possible in areas analogous to where the military operates.

Aircraft Operation Mitigation

All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haulouts and rookeries), except in emergencies.

Based on our evaluation of the Navy's mitigation measures, as well as other measures considered by NMFS, NMFS

has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Non-Authorized Take Prohibited

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, the Navy must consult with NMFS before the next launch event.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The Navy will conduct suite of monitoring measures on SNI to document impacts of the launch events on marine mammals. These monitoring measures are described below.

Visual and Video Camera Monitoring

The Navy proposes to conduct marine mammal monitoring during launches from SNI, using visual monitoring as well as simultaneous autonomous audio recording of launch sounds and video recording of pinniped behavior. The monitoring (all land-based) will provide data required to characterize the extent and nature of ''taking.'' In particular, it will provide the information needed to document the nature, frequency, occurrence, and duration of any changes in pinniped behavior that might result from the missile launches, including the occurrence of stampedes.

Visual monitoring, before and after launches, is a scan of the haulout beaches to count pinnipeds over a wider FOV than can be captured by a stationary video camera. This is typically done over a 15–30 minute period. Visual monitoring is conducted while the equipment is being set up and broken down for video and acoustic monitoring which is described in greater detail below. Prior to a launch event, Navy personnel will make observations of the monitored haulout and record the numbers and types of pinnipeds observed, noting the information on field data sheets. After a launch event, Navy personnel will return to the monitored haulout as soon as it is safe, and record the numbers and types of pinnipeds that remain on the haulout sites and any notable changes.

Video monitoring is conducted by recording continuously from a minimum of 2 hours before the event to approximately 1 hour after the event.

These video and audio records will be used to document pinniped responses to the launches. This will include the following components:

- Identify and document any change in behavior or movements that may occur at the time of the launch;
- Compare received levels of launch sound with pinniped responses, based on acoustic and behavioral data from up to three monitoring sites at different distances from the launch site and missile path during each launch; from the data accumulated across a series of launches, to attempt to establish the ''dose-response'' relationship for launch sounds under different launch conditions if possible;
- Ascertain periods or launch conditions when pinnipeds are most and least responsive to launch activities, and
- Document take by harassment.

The launch monitoring program will include remote video recordings before, during, and after launches when pinnipeds are present in the area of potential impact, as well as visual assessment by trained observers before and after the launch. Remote cameras are essential during launches because safety rules prevent personnel from being present in most of the areas of interest. In addition, video techniques will allow simultaneous ''observations'' at up to three different locations, and will provide a permanent record that can be reviewed in detail. During some launches, the use of video methods may allow observations of up to three pinniped species during the same launch, though in general one or two species will be recorded.

The Navy will seek to obtain video and audio records from up to three locations at different distances from the flight path of each missile launched from SNI. The Navy will try and reduce factors that limit recordings. On occasion, paired video and audio data were obtained from less than three sites during some launches, due to various potential problems with video and acoustic recorders, timing of remote recordings when launches are delayed, absence of pinnipeds from some locations at some times, etc. Corresponding data is available from the previous monitoring periods (2001–2018).

Two different types of cameras will be available for use in obtaining video data simultaneously from three sites:

(1) Small handheld high-definition video cameras on photographic tripods will be set up by Navy personnel at various locations on the day of a launch, with the video data being accessible following the launch. Recording duration varies between 300 and 600 minutes following initiation of record mode on these cameras, depending upon battery life, external memory card availability and other factors. The digital data is later copied to DVD–ROMs for subsequent viewing and analysis; and

(2) Portable Forward-Looking Infrared Radiometer (FLIR) video cameras will be set up by the Navy for nighttime launches. These cameras have a recording duration of approximately 300 minutes from initiation of the record mode. The FLIR video data will be

accessible following the launch. The digital data will later be copied to DVD–ROMs for subsequent viewing and analysis.

Before each launch, Navy personnel will set up or activate up to three of the available video cameras such that they overlook chosen haulout sites. Placement will be such that disturbance to the pinnipeds is minimized, and each camera will be set to record a focal subgroup of sea lions or harbor seals within the haulout aggregation for the maximum recording time permitted by the videotape capacity. The entire haulout aggregation on a given beach will not be recorded during some launches, as the wide-angle view necessary to encompass an entire beach would not allow detailed behavioral analyses (Holst *et al.,* 2005a; Holst *et al.,* 2008). It will be more effective to obtain a higher-magnification view of a sample of the animals on the beach. Prior to selecting a focal animal group, a pan of the entire haulout beach and surrounding area will be made in order to document the total number of animals in the area.

Following each launch, video recordings will continue for at least 15 minutes and up to several hours. Greater post-launch time intervals are not advisable as storms and other events may alter the composition of pinniped haulout groups independent of launch events.

Video data will be transferred to DVD–ROMs. A trained biologist will review and code the data from the video data as they are played back to a monitor (Holst *et al.,* 2005a; Holst *et al.,* 2008). The variables transcribed from the videos, or recorded directly at the beach sites, will include:

- Composition of the focal subgroup of pinnipeds (approximate numbers and sexes of each age class);
- Description and timing of disruptive event (launch); this will include documenting the occurrence of launch, whether launch noise is evident on audio channel, and duration of audibility; and
- Movements of pinnipeds, including number and proportion moving, direction and distance moved, pace of movement (slow or vigorous). In addition, the following variables concerning the circumstances of the observations will also be recorded from the videotape or from direct observations at the site:
  - Study location;
  - Local time;
  - Weather (including an estimate of wind strength and direction, and presence of precipitation); and
  - Tide state (Exact times for local high and low tides will be determined by consulting relevant tide tables for the day of the launch).

Acoustic Monitoring

Acoustical recordings will be obtained during each monitored launch. These recordings will be suitable for quantitative analysis of the levels and characteristics of the received launch sounds. In addition to providing information on the magnitude, characteristics, and duration of sounds to which pinnipeds are exposed during each launch, these acoustic data will be combined with the pinniped behavioral data to determine if there is a ''dose-response'' relationship between received sound levels and pinniped behavioral reactions. The Navy will use up to four autonomous audio recorders to make acoustical measurements. During each launch, these will be located as close as practical to monitored pinniped haulout sites and near the launch pad itself. The monitored haulout sites will typically include one site as close as possible to the missile's planned flight path and one or two locations farther from the flight path within the area of potential impact with pinnipeds present. Autonomous Terrestrial Acoustic Recorders (ATARs) will be deployed at the recording locations on the launch day well before the launch time, and will be retrieved later the same day.

During each launch, data on the type and trajectory of the missile will be documented. From these records, the CPA of the missile to the microphone will be determined, along with its altitude above the shoreline. These data will be important in comparing acoustic data with those from other launches. Other factors to be considered will include wind speed and direction and launch characteristics (*e.g.,* low- vs. high-angle launch). These analyses will include data from previous and ongoing monitoring work (Burke 2017; Holst *et al.,* 2010; Holst *et al.,* 2005a; Holst *et al.,* 2008; Holst *et al.,* 2011; Ugoretz 2016; Ugoretz and Greene Jr. 2012), as well as measurements to be obtained during launches under this IHA.

Reporting

A technical report will be submitted to the NMFS' Office of Protected Resources within 90 days from the date the IHA expires. This report will provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches activities at SNI that are covered under this IHA.

The technical report containing the following information: Species present, number(s), general behavior, presence of pups, age class, gender, numbers of pinnipeds present on the haulout prior to commencement of the launch, numbers of pinnipeds that responded at a level that would be considered harassment length of time(s) pinnipeds remained off the haulout (for pinnipeds that flushed), and any behavioral responses by pinnipeds that were likely in response to the specified activities. Launch reports would also include date(s) and time(s) of each launch; date(s) and location(s) of marine mammal monitoring, and environmental conditions including: Visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction. If a dead or seriously injured pinniped is found during post-launch monitoring, the incident must be reported to the NMFS Office of Protected Resources and the NMFS' West Coast Regional Stranding Coordinator immediately. Results of acoustic monitoring, including the recorded sound levels associated with the launch and/or sonic boom (if applicable) would also be included in the report.

In the unanticipated event that any cases of pinniped mortality are judged to result from launch activities at any time during the period covered by this IHA, this will be reported to NMFS immediately.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population

status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 4, given that the anticipated effects of this activity on these different marine mammal species are expected to be similar. Activities associated with the proposed 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 only, from airborne sounds of target and missile launch events. Based on the best available information, including monitoring reports from similar activities that have been authorized by NMFS, behavioral responses will likely be limited behavioral reactions such as alerting to the noise, with some animals possibly moving toward or entering the water, depending on the species and the intensity of the launch noise. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Given the launch acceleration and flight speed of the missiles, most launch events are of extremely short duration. Strong launch sounds are typically detectable near the beaches at western SNI for no more than a few seconds per launch (Holst *et al.,* 2010; Holst *et al.,* 2005a; Holst *et al.,* 2008; Holst *et al.,* 2005b). Pinnipids hauled out on beaches where missiles fly over launched from the Alpha Launch Complex routinely haul out and continue to use these beaches in large numbers. At the Building 807 Launch Complex few pinnipeds are known to haul out on the shoreline immediately adjacent to this launch site. Thus, even repeated instances of Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described above.

If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Flushing of pinnipeds into the water has the potential to result in mother-pup separation, or could result in a stampede, either of which could potentially result in serious injury or mortality. However, based on the best available information, including reports from almost 20 years of marine mammal monitoring during launch events, no serious injury or mortality of marine mammals is anticipated as a result of the proposed activities.

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 injury, serious injury, or mortality are anticipated or authorized;
- The anticipated incidences of Level B harassment are expected to consist of temporary modifications in behavior (*i.e.,* movements of more than 10 m and occasional flushing into the water with return to haulouts), which are not expected to adversely affect the fitness of any individuals;
- The proposed activities are expected to result in no long-term changes in the use by pinnipeds of rookeries and haulouts in the project area, based on nearly 20 years of monitoring data; and
- The presumed efficacy of planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

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 finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

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 determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, formal consultation under section 7 of the ESA was not required for this action.

Authorization

As a result of these determinations, NMFS has issued an IHA to the Navy for conducting rocket and missile launch events on SNI provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 14, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG876

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Chevron Richmond Refinery Long Wharf Maintenance and Efficiency Project in San Francisco Bay, California

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to Chevron to take small numbers of marine mammals, by harassment, incidental to the Long Wharf Maintenance and Efficiency Project (LWMEP) in San Francisco Bay, California.

DATES: This authorization is effective from June 1, 2019, through May 31, 2020.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as the issued IHA, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are 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.

Summary of Request

On January 17, 2019, NMFS received a request from Chevron for an IHA to take marine mammals incidental to pile driving and removal associated with the LWMEP in San Francisco Bay, California. The application was deemed adequate and complete on April 8, 2019. Chevron's request is for take of a small number of seven species of marine mammals, by Level B harassment and Level A harassment. Neither Chevron nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to Chevron for similar work (82 FR 27240; June 17, 2017). However, the construction schedule and scope was revised and no work was conducted under that IHA. NMFS issued a second IHA on May 31, 2018 to Chevron for work not conducted in 2017 (83 FR 27578; June 13, 2018*).* This IHA covers one year of this larger project for which Chevron obtained the prior IHA, and Chevron also intends to request take authorizations for subsequent facets of the project. The larger multi-year project involves various construction activities that would allow Chevron to comply with Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) and to improve safety and efficiency at the Long Wharf. Chevron complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the *Estimated Take* section.

Because of the similarity of the work and marine mammal impacts to that covered in previous IHAs, we have often cited back to previous documents for more detailed descriptions.

Description of Activity

Chevron's Richmond Refinery Long Wharf (Long Wharf) located in San Francisco Bay, is the largest marine oil terminal in California. Impact pile driving and vibratory pile driving and removal will be employed during the planned construction project. These actions could produce underwater sound at levels that could result in the injury or behavioral harassment of marine mammal species. Pile driving activities would be timed to occur within the standard NMFS work windows for Endangered Species Act (ESA)-listed fish species (June 1 through November 30) over multiple years. An estimated 67 days of pile driving activity within the designated work window are planned for 2019. Additional work in the future will require subsequent IHAs. The IHA is effective from June 1, 2019 through May 31, 2020.

A detailed description of the planned activities is provided in the **Federal Register** notice of the proposed IHA (84 FR 17788; April 26, 2019) for the issued IHA, **Federal Register** notice of the issuance of the 2018 IHA for Chevron's LWMEP project (83 FR 27578; June 13, 2018), the **Federal Register** notice of the proposed IHA (83 FR 18802; April 30, 2018), as well as Chevron's current IHA application for the 2019 work season. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notices and application for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on March 26, 2019 (84 FR 177880). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). Specific comments and responses are provided below. The Commission's recommendations and our responses are provided here, and the comments have been posted online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* The Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Comment 1: The Commission recommended that NMFS consult with external scientists and acousticians to determine the appropriate accumulation time that action proponents should use to determine the extent of the Level A

harassment zones based on the associated SEL_{cum} thresholds for the various types of sound sources, including stationary sound sources.

Response: NMFS considers this a priority and has formed a Working Group to focus on the issue of accumulation time. Once the NMFS internal Working Group develops a proposal, it will be shared with Federal partners and other stakeholders.

Comment 2: The Commission recommended that, for all relevant incidental take authorizations, NMFS refrain from using a source level reduction factor for sound attenuation device implementation during impact pile driving, including the 60-inch steel piles proposed for use by Chevron.

Response: While it is true that noise level reduction measured at different received ranges does vary, given that both Level A and Level B harassment estimation using geometric modeling is based on noise levels measured at near-source distances (~10 meters), NMFS believes it reasonable to use a source level reduction factor for sound attenuation device implementation during impact pile driving. In the case of the San Francisco-Oakland Bay Bridge impact driving isopleth estimates using an air bubble curtain for source level reduction, NMFS reviewed Caltrans' bubble curtain ''on and off'' studies conducted in San Francisco Bay in 2003 and 2004. The equipment used for bubble curtains has likely improved since 2004 but due to concerns for fish species, Caltrans has not been able to conduct ''on and off'' tests recently. Based on 74 measurements (37 with the bubble curtain on and 37 with the bubble curtain off) at both near (<100 meters) and far (>100 meters) distances, the linear averaged received level reduction is 6 decibels (dB). If limiting the data points (a total of 28 measurements, with 14 during bubble curtain on and 14 during bubble curtain off) to only near distance measurements, the linear averaged noise level reduction is 7 dB. Since impact zone analysis using geometric spreading model is typically based on measurements at near-source distance, we consider it appropriate to use a reduction of 7 dB as a noise level reduction factor for impact pile driving using an air bubble curtain system.

Bubble curtains are effective at attenuating sound originating within the water column. Pile driving does generate sound within the seafloor as well. This sound travels within the seafloor and emerges back to the water column, but its intensity is reduced within the sediment due to absorption by the sediment and reflection at the sediment/water interface.

NMFS will evaluate the appropriateness of using a certain source level reduction factor for sound attenuation device implementation during impact pile driving for all relevant incidental take authorizations when more data become available.

Comment 3: The Commission recommended that NMFS should direct Chevron to use its PSOs to monitor more sufficiently both the Level A and B harassment zones, including the shut-down zones. The Commission further recommended that one PSO should be located in the near-field to ensure an unobstructed view of the shut-down zones and one PSO should be located on the north end of the wharf to monitor harbor seals in the far field, focusing on the area between the wharf and Castro Rocks.

Response: NMFS believes that the monitoring plan provided by the applicant is adequate to sufficiently monitor Level A and B harassment zones, including shut-down zones. Chevron opted to place one PSO on the east side of the wharf to monitor any marine mammals that occur between the wharf and the shoreline. The wharf is covered with building and large equipment resulting in obstructed views. Therefore, it is impossible for a single PSO on the east side of the wharf to also monitor the near or far fields on the west side of the wharf. However, NMFS will recommend that the PSO stationed on the north end of the wharf will monitor the entire visible area, with extra focus on the section between Castro Rocks and the wharf.

Comment 4: The Commission recommended that NMFS refrain from implementing its proposed renewal process for Chevron's subsequent authorizations. The Commission believes that the renewal process should be used sparingly and selectively, by limiting its use only to those proposed incidental harassment authorizations that are expected to have the lowest levels of impacts to marine mammals and that require the least complex analyses. Also, the Commission recommended that NMFS provide the Commission and other reviewers the full 30-day comment opportunity set forth in section 101(a)(5)(D)(iii) of the MMPA.

Response: Regarding the Commission's comment that Renewal IHAs should be limited to certain types of projects NMFS has explained on its website and in individual **Federal Register** notices that Renewal IHAs are appropriate where the continuing activities are identical, nearly identical, or a subset of the activities for which the initial 30-day comment period applied. If Chevron seeks to obtain a Renewal IHA in the future, NMFS will determine at that time whether the request meets the necessary conditions under which a Renewal IHA could be considered.

NMFS has taken a number of steps to ensure the public has adequate notice, time, and information to be able to comment effectively on Renewal IHAs within the limitations of processing IHA applications efficiently. **Federal Register** notices for the proposed initial IHAs identified the conditions under which a one-year Renewal IHA might be appropriate. This information is presented in the *Request for Public Comments* section and thus encourages submission of comments on the potential of a one-year renewal as well as the initial IHA during the 30-day comment period. In addition, when we receive an application for a Renewal IHA, we will publish notice of the proposed IHA Renewal in the **Federal Register** and provide an additional 15 days for public comment, making a total of 45 days of public comment. We also directly contact all commenters on the initial IHA by email, phone, or, if the commenter did not provide email or phone information, by postal service to provide them the opportunity to submit any additional comments on the proposed Renewal IHA. Where the commenter has already had the opportunity to review and comment on the potential for a Renewal in the initial proposed IHA for these activities, the abbreviated additional comment period is sufficient for consideration of the results of the preliminary monitoring report and new information (if any) from the past year.

Comment 5: The Commission recommended that, NMFS (1) request that Chevron submit any future authorizations at least 6 months prior to the planned start date for incidental harassment authorizations and 9 months prior for rulemakings and (2) take all steps necessary to ensure that it publishes and finalizes proposed incidental harassment authorizations far enough in advance of the planned start date of the proposed activities to ensure full consideration is given to any and all comments received

Response: NMFS encourages all applicants to submit applications for IHA's 5–8 months in advance of the intended project start date and for rulemakings/LOA at least 9 months, and preferably 15 months, in advance of the intended project start date. NMFS provided the required 30-day notice for public comment, and has adequately considered all public comments

received in making the necessary findings.

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 1 lists species that may occur in the vicinity of the project area. A description of the marine mammals in the area of the activities is found in the **Federal Register** notice of the issuance of the 2018 IHA for Chevron's LWMEP project (83 FR 27578; June 13, 2018), the **Federal Register** notice of the proposed IHA (83 FR 18802; April 30, 2018), as well as Chevron's current IHA application for the 2019 work season. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA. Specifically, the only change from the 2018 IHA is an increase in numbers of the eastern north Pacific stock of gray whale which have increased from 20,990 to 26,960.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-/-; (N)	26,960 (0.05, 25,849, 2016).	801	138
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	California Coastal	-/-;(N)	453 (0.06, 346, 2011)	2.7	≥2.0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena Phocoena*	San Francisco-Russian River Stock.	-/-;(N)	9,886 (0.51, 6,625, 2011)	66	0
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	Eastern U.S. stock	-/-;(N)	296,750 (-, 153,337, 2011).	9,200	389
Northern fur seal	*Callorhinus ursinus*	California stock	-/-;(N)	14,050 (-, 7,524, 2013)	451	1.8
Family Phocidae (earless seals):						
Pacific harbor seal	*Phoca vitulina*	California stock	-/-;(N)	30,968 (-, 27,348, 2012)	1,641	43
Northern elephant seal	*Mirounga angustirostris*	California Breeding stock	-/-;(N)	179,000 (-, 81,368, 2010)	4,882	8.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the **Federal Register** notice of the issuance of the 2018 IHA for Chevron's LWMEP project (83 FR 27578; June 13, 2018) and the **Federal Register** notice of the proposed IHA (83 FR 18802; April 30, 2018). This information remains applicable to the issuance of the 2019 IHA. NMFS has reviewed the monitoring data from the initial IHA and other scientific literature, and found no new information that would affect our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

This section provides an estimate of the number of incidental takes authorized 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 primarily be by Level B harassment, as use of the acoustic source (*i.e.,* pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for limited auditory injury (Level A harassment) to result, primarily for high frequency species (harbor porpoises) because predicted auditory

injury zones are larger than for other functional hearing groups and for phocids (harbor seals) as there is a sizable harbor seal haulout (Castro Rocks) located in close proximity to the project area. The required mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) 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 authorized 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). 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 microPascal, root mean square (μPa (rms) for continuous (*e.g.,* vibratory pile-driving), and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Chevron's planned includes the use of continuous (vibratory pile driving and removal) and intermittent (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) (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Chevron's planned activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in Table 2 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 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (Received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$ 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$ 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$ 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$ 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$ 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The project includes impact pile driving, vibratory pile driving and vibratory pile removal. Source levels of some pile driving activities are based on hydroacoustic testing performed in 2018 at the LWMEP location as well as reviews of measurements of the same or similar types and dimensions of piles available in the literature. Based on this information, the source levels described below are assumed for the underwater noise produced by construction activities.

Eight batter steel pipe piles, 60-inch diameter would be installed using an impact hammer as it is difficult to vibrate in batter piles. These piles also have very high axial design loads that can only be achieved by impact driving methods. Other projects conducted under similar circumstances were reviewed in order to estimate the approximate noise effects of the 60-inch steel piles. The best match found for sound source levels is from summary values provided by Caltrans in their hydroacoustic guidance document (Caltrans 2015). Summary values for the impact pile driving of 60-inch steel pipe piles indicates that noise levels of up to 210 peak, 185 dB SEL (single strike), and 195 RMS would be produced at 10 meters during pile driving using no sound attenuation such as a bubble curtain. The use of properly functioning bubble curtains is expected to reduce the peak and RMS noise levels by about 7 dB. As a result, noise levels of 203 dB peak, 178 dB SEL (single strike), and 188 dB are utilized to assess potential acoustic impacts.

It is expected that just one 60-inch pile would be driven over one (1) hour of active driving in a given day and that only one (1) pile would be installed in a given week. Installation could require up to 2,400 blows from an impact hammer, such as a HHK–16 or similar diesel hammer, producing approximately 173,000 to 217,000 ft. lbs. maximum energy per blow and 1.5 to 2 sec/blow average. As noted above, bubble curtains will be used during the installation of the 60-inch steel pipe piles in order to reduce underwater noise levels, with an assumed attenuation of 7 dB. NMFS acknowledges that noise level reductions measured at different project locations as well as different received ranges can vary widely. However, NMFS believes it reasonable to use a source level reduction factor for sound attenuation device implementation during impact pile driving. NMFS reviewed Caltrans' bubble curtain ''on and off'' studies conducted in San Francisco Bay in 2003 and 2004. Based on near distance measurements (a total of 28 measurements, with 14 during bubble curtain on and 14 during bubble curtain off), the linear averaged noise level reduction is 7 dB. As a conservative approach, NMFS will use a standard reduction of 7 dB of the source level for impact zone estimates.

Installation of 24-inch diameter square concrete piles is planned for the modifications at the four berths. Approximately one to two of these piles would be installed in one work day, using impact driving methods and a bubble curtain attenuation system. Based on measured blow counts for 24-inch concrete piles driven at the Long Wharf Berth 4 in 2011, installation for each pile could require up to approximately 300 blows from a DelMag D62 22 or similar diesel hammer, producing approximately 165,000 ft lbs maximum energy (may not need full energy) and 1.5 second per blow average over a duration of approximately 20 minutes per pile, with 40 minutes of pile driving time per day if two (2) piles are installed.

To estimate the noise effects of the 24-inch square concrete piles, the underwater noise measurements recorded for this pile type at the Long Wharf during the 2018 construction season are utilized. These measured values were: 191 dB peak, 161 dB SEL (single strike), and 173 dB RMS during attenuated impact driving (AECOM 2018).

As part of the Berth 4 Loading Platform seismic retrofit, four (4) clusters of 13 composite piles (52 piles total) will be installed to provide protection to the infrastructure. These plastic encased concrete piles would be installed with a vibratory pile driver (APE 400B King Kong or similar vibratory driver), with a drive time of approximately 10 minutes per pile. Up to five (5) of these piles could be installed in any single work day.

Projects conducted under similar circumstances with similar piles were reviewed in order to approximate the noise effects of the 12-inch composite barrier piles. Since these piles will be composed of concrete encased in plastic, vibratory installation of similarly sized concrete piles would provide a good surrogate. However, concrete piles are rarely installed with a vibratory driver, and no suitable data could be located. In the absence of this data, we are conservatively using data from the Anacortes Ferry Terminal in Washington State, where 13-inch plastic coated steel piles were installed with a vibratory hammer. RMS noise levels produced during this installation varied from 138 to 158 dB RMS at 43 meters (141 feet) from the pile (Laughlin 2012). From these measurements, a peak noise value of 178 dB and an average RMS value of 168 dB normalized to a 10 meter (33 feet) distance was used to estimate the extent of underwater noise from installation of the 12-inch composite piles. During installation of the 12-inch composite barrier piles for the planned Project, up to 50 minutes of vibratory driving could occur per day.

For the Berth 4 Loading Platform seismic retrofit, eight (8) 36-inch diameter temporary steel piles would be installed using a vibratory pile driver (APE 400B King Kong or similar vibratory driver) will be needed to support the guide template for the driving of the permanent 60-inch steel pipe piles. Each 36-inch temporary pile has an estimated drive time of approximately 10 minutes per pile. Up to four (4) of these piles could be installed in any single work day.

Projects conducted under similar circumstances with similar piles were reviewed in order to approximate the noise effects of the 36-inch steel pipe. The best match for estimated noise levels is from the Explosive Handling Wharf-2 (EHW–2) project located at the Naval Base Kitsap in Bangor, Washington (Illingworth and Rodkin 2013). During vibratory pile driving associated with this Project, which occurred under similar circumstances, average peak noise levels were approximately 180 dB, and the RMS was approximately 170 dB at a 10 meter (33 feet) distance (Caltrans 2015a). Installation of the 36-inch steel pipe piles is expected to be require 40 minutes per day.

In total, two of the eight 36-inch temporary piles will require proofing using an impact hammer. Each pile will require up to 30 strikes from an impact hammer during proofing which will take place during the last foot of pile driving. Up to two (2) piles would be proofed in one day, with each pile requiring up to 30 strikes from an impact hammer, for a total of 60 strikes in one day. The best match found for sound source levels is from summary values provided by Caltrans in their hydroacoustic guidance document (Caltrans 2015). Summary values for the impact pile driving of 36-inch steel pipe piles in water less than 5m deep indicates that noise levels of up to 208 peak, 180 dB SEL (single strike), and 193 RMS would be produced at 10 meters during pile driving. Since impact hammers are often operated at reduced power output during proofing, the source levels are likely to be lower than the values for impact driving used here. Due to very limited time that pile proofing would occur (60 strikes total,

over a few minutes of active hammering) no sound attenuation would be used.

The Berth 4 Loading Platform seismic retrofit will require vibratory installation of, eight (8) 20-inch diameter temporary steel piles (APE 400B King Kong or similar vibratory driver) to support the guide template needed for the driving the permanent 60-inch steel pipe piles. Each 20-inch temporary pile has a drive time per pile of approximately 10 minutes. Up to four (4) of these piles could be installed in any single work day. The best match for estimated noise levels is from vibratory driving of 24-inch piles at the Explosive Handling Wharf-2 (EHW–2) project located at the Naval Base Kitsap in Bangor, Washington (Illingworth and Rodkin 2013). During vibratory pile driving associated with this Project, which occurred under similar circumstances, measured peak noise levels were approximately 180 dB, and the RMS was approximately 163 dB at a 10 meter (33 feet) distance (Illingworth and Rodkin 2013). During installation of the 20-inch steel pipe piles will require approximately 40 minutes per day.

The project includes the removal of 106 16-inch timber piles, and five (5) 18 to 24-inch square concrete piles using a vibratory pile driver. Up to 12 of these piles could be extracted in one (1) work day. Extraction time needed for each pile may vary greatly, but could require approximately 400 seconds (approximately seven (7) minutes) from an APE 400B King Kong or similar driver. The most applicable noise values for wooden pile removal from which to base estimates for the LWMEP are derived from measurements taken at the Pier 62/63 pile removal in Seattle, Washington. During vibratory pile extraction associated with this Project, which occurred under similar circumstances, the RMS was approximately 152 dB (WSDOT 2011). Applicable sound values for the removal of concrete piles could not be located, but they are expected to be similar to the levels produced by wooden piles described above, as they are similarly sized, non-metallic, and will be removed using the same methods.

For pile driving that does not have project specific hydroacoustic data available, the practical spreading model with a transmission loss coefficient of 15 (4.5 dB per doubling of distance) is used. However, project-specific transmission loss values have been measured for the impact driving of concrete piles and resulted in a measured transmission loss factor of 20 (~8 dB per doubling of distance) which has been applied to calculate distances to harassment isopleths for those specific piles. This value is calculated from hydroacoustic monitoring of attenuated impact driving of concrete piles conducted as part of the LWMEP. The results of the 2018 hydroacoustic monitoring are provided in Appendix A of the application.

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 impact and vibratory pile driving), NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below in Table 3.

TABLE 3—INPUTS FOR USER SPREADSHEET

Spreadsheet tab used	E.1–2: Impact pile driving	E.1–2: Impact pile driving	E.1–2: Impact pile driving	A.1: Vibratory driving	A.1: Vibratory driving	A.1: Vibratory driving	A.1: Vibratory driving
Pile type	60-in steel	24-inch concrete	36-in steel	12-inch composite	36-in steel	20-in steel	Wood/ concrete
Source Level	178 SEL	161 SEL	180 SEL	168 RMS	170 RMS	163 RMS	152 RMS.
Weighting Factor Adjustment (kHz).	2	2	2	2.5	2.5	2.5	2.5.
Number of strikes in 1 h OR number of strikes per pile.	2,400	300	30	NA	NA	NA	NA.
Number of piles per day	1	2	2	5	4	4	12.
Propagation (xLogR)	15	20	15	15	15	15	15.
Duration to drive single pile (minutes).	NA	NA	NA	10	10	10	7.
Distance of source level measurement (meters) + .	10	10	10	10	10	10	10.

Table 4 shows the Level A harassment isopleths as determined utilizing inputs from Table 3. Note that for all calculations, the results based on SEL_{ss} are larger than SPL_{pk}, therefore, distances calculated using SEL_{ss} are used to calculate the area. Level B Harassment isopleths for impact and vibratory driving and extraction are shown in Table 5.

TABLE 4—RADIAL DISTANCES TO LEVEL A HARASSMENT ISOPLETHS DURING IMPACT AND VIBRATORY DRIVING

Project element requiring pile installation	Source levels at 10 meters (dB)		Distance to Level A threshold [1] meters (feet)				
	Peak [2]	RMS/SEL	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
Attenuated Impact Driving (with bubble curtain):							
60-inch steel pipe (1 per day).	203	178 SEL	831 (2,726)	30 (97)	990 (3,247)	445 (1,459)	32 (106)
24-inch square concrete (1–2 per day).	191	161 SEL	19 (64)	2 (5)	22 (73)	12 (40)	2 (6)
Impact Pile Proofing (no bubble curtain):							
36-inch steel pipe pile (2 total).	208	180 SEL	97 (317)	3 (11)	115 (377)	52 (170)	4 (12)
Vibratory Driving/Extraction:							
12-inch Composite Barrier Pile (5 per day).	178	168 RMS	18 (58)	2 (5)	26 (86)	11 (35)	1 (2)
36-inch steel pipe pile (4 per day).	195	170 RMS	21 (68)	2 (6)	31 (101)	13 (41)	1 (3)
20-inch steel pipe pile (4 per day).	180	163 RMS	7 (23)	1 (2)	10 (34)	4 (14)	0 (1)
Wood and concrete pile extraction (12 per day).	No Data	152 RMS	2 (7)	0 (<1)	3 (10)	1 (4)	0 (<1)

Notes:
For calculation worksheets used to develop these numbers is provided in Appendix B.
[1] Level A thresholds are based on the NMFS 2016 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing; cSEL threshold distances are shown. See footnote 3 below.
[2] All distances to the peak Level A thresholds are less than 33 feet (10 meters).
Distances are rounded to the nearest foot or to "<1.0 (0)" for values less than 1 foot.
Peak and cSEL are re: 1 μPa and 1 μPa^2-sec, respectively.
dB = decibels.
SEL = sound exposure level.
RMS = Root Mean Square.

TABLE 5—RADIAL DISTANCES TO LEVEL B HARASSMENT ISOPLETHS DURING IMPACT AND VIBRATORY DRIVING

Pile type	Source levels at 10 meters (dB)		Distance to threshold 160/120 dB RMS (Level B) * meters (feet)
	Peak	RMS	
Attenuated Impact Driving (with bubble curtain):			
60-inch steel pipe (1 per day)	203	188	736 (2,413)
24-inch square concrete (1–2 per day)	191	173	45 (147)
Impact Pile Proofing (no bubble curtain):			
36-inch steel pipe pile (2 total)	208	190	1,000 (3,280)
Vibratory Driving/Extraction:			
12-inch Composite Barrier Piles (5 per day)	178	168	15,849 (51,984)
36-inch steel pipe pile (4 per day)	180	170	21,544 (70,665)
20-inch steel pipe pile (4 per day)	180	163	7,356 (24,129)
Wood and concrete pile extraction (12 per day)	No Data Available.	152	1,359 (4,459)

Notes:
dB decibels.
RMS root mean square.
* For underwater noise, the Level B Harassment threshold is 160 dB for impulsive noise and 120 dB for continuous noise.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

For the 2019 IHA application, a combination of nearby haul-out occupancy and at-sea densities were used to develop take estimates, in order to account for both local movements of harbor seals that haul out at Castro Rocks and other individuals that may be foraging in the more distant part of the Level B Harassment zone. By using hydroacoustic data collected in 2018, the extent of the harassment zones was refined for attenuated impact driving of

concrete piles by using the transmission loss measured during 2018 project (20logr). As the Level B Harassment zones estimated for the 2019 IHA are generally more localized, only the occupancy from the local Castro Rocks haul-out is used.

Castro Rocks, located approximately 1.3 km northwest of the project site, is the largest harbor seal haul out site in the northern part of San Francisco Bay and is the second largest pupping site in the Bay (Green *et al.* 2002). Tidal stage is a major controlling factor of haul out usage at Castro Rocks with more seals present during low tides than high tide periods (Green *et al.* 2002). Additionally, the number of seals hauled out at Castro Rocks also varies with the time of day, with proportionally more animals hauled out during the nighttime hours (Green *et al.* 2002). Therefore, the number of harbor seals in the water around Castro Rocks will vary throughout the work period. Pile driving would occur intermittently during the day with average active driving times typically of a few hours per day, so varying sets of animals may be hauled out or in the water. However, there are no systematic counts available for accurately estimating the number of seals that may be in the water near Long Wharf at any given time. The National Park Service provided recent data indicating that up to 176 seals could be present each day at Castro Rocks. This value was conservatively based on the highest mean plus the standard error of harbor seals observed at Castro Rocks per day (Codde, S. and S. Allen 2013, 2015, and 2017), a value of 176 seals. The 2018 draft Long Wharf marine mammal monitoring report indicated that 24 harbor seals were observed within the Level B harassment zone and zero individuals were observed within the Level A harassment zone over 10 days of pile driving, which equals less than 1 percent of the authorized number of harbor seals with an average of 2.4 animals per day. The maximum number observed per day was six.

Since there are no California sea lion haul-outs in the vicinity of the project area, relatively few animals are expected to be present. However, monitoring for the RSRB did observe limited numbers in the north and central portions of the Bay during working hours. During monitoring for the San Francisco-Oakland Bay Bridge (SFOBB) Project in the central Bay, 83 California sea lions were observed in the vicinity of the bridge over a 17-year period from 2000–2017, and from these observations, an estimated at-sea density of 0.16 animals per square kilometer is derived (NMFS 2018). This bridge is located approximately 25 km south of the LWMEP location and is considered by NMFS to be the best available information. The 2018 Long Wharf draft monitoring report did not record any observations of sea lions.

Small numbers of northern elephant seal may haul out or strand on coastline within the Central Bay. Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years. From those data, Caltrans has produced an estimated at-sea density for northern elephant seal of 0.16 animal per square mile (0.06 animal per square kilometer) (Caltrans, 2015b). Most sightings of northern elephant seal in San Francisco Bay occur in spring or early summer, and are less likely to occur during the periods of in-water work for this project. As a result, densities during pile driving for the planned action are likely to be lower. Additionally, this species was not observed by the marine mammal observers in the vicinity of the Long Wharf during 2018 pile driving monitoring.

The occurrence of northern fur seal in San Francisco Bay depends largely on oceanic conditions, with animals more likely to strand during El Niño events. Equatorial sea surface temperatures are above average across most of the Pacific Ocean this year, and El Niño is expected to continue through winter of 2019 and into spring (NOAA 2019). There are no estimated at-sea densities for this species in San Francisco Bay and no seals were recorded during 2018 Long Wharf marine mammal monitoring.

A small but growing population of harbor porpoises utilizes San Francisco Bay which are typically spotted in the vicinity of Angel Island and the Golden Gate (6 and 12 kilometers (3.7 and 7.5 miles) southwest respectively) and the vicinity of Treasure Island (Caltrans 2018). However, they may occur in other areas in the Central Bay in low numbers, including the project area. Based on monitoring conducted for the SFOBB project in 2017, an in-water density of 0.17 animals per square kilometer has been estimated by Caltrans for this species (NMFS 2018). No members of this species were recorded during 2018 during pile driving activities at LWMEP.

Bottlenose dolphins are typically found close to the Golden Gate Bridge when they are observed in San Francisco Bay. There are no estimated at-sea densities for this species in San Francisco Bay available for calculating a take estimate. Beginning in 2015, two individuals have been observed frequently in the vicinity of Oyster Point (GGCR 2018; Perlman, 2017). The average reported group size for bottlenose dolphins is five. Reports show that a group normally comes into San Francisco Bay, is near Yerba Buena Island once per week for approximately two (2) weeks and then leaves (NMFS, 2017).

Gray whales have been observed entering the Bay during their northward migration period, and are most often sighted in the Bay between February and May. Most venture only about 2 to 3 km (about 1–2 miles) past the Golden Gate. However, gray whales have occasionally been sighted as far north as San Pablo Bay. Pile driving is not expected to occur during the February-May period, and gray whales are not likely to be present at other times of year. No whales were observed as part of 2018 Long Wharf marine mammal monitoring activities.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

When density data was available, take for the project was calculated by multiplying the density times the harassment zone (km^2) associated with pile driving activities that are underway times the number of construction days. Since density data was only available for harbor seals, harbor porpoises, and California sea lions, these were the only species whose take was calculated using this methodology. For species without density information, information on average group size or local observational data was used as described below.

Pacific Harbor Seal

Chevron initially estimated that all harbor seals (176) at Castro Rocks would be exposed to noise that reaches the threshold for Level B harassment on every day on which there was pile driving. The areas of the Level A harassment zones in which take by injury could occur were determined by subtracting the shutdown zone areas from Level A harassment zone areas. Chevron estimated Level A take for impact driving of the 60-inch and 36-inch steel piles by using Level B take and multiplying it by the ratio of the Level A zone area to the Level B zone area. Level A take is not requested for vibratory driving. This resulted in an estimated 11,968 takes by Level B harassment and 513 takes by Level A harassment. However, based on input from the Commission as well as the size of the Level B zones extending beyond Castro Rocks, NMFS is authorizing takes for all 176 seals per day multiplied by 37 days for all piles but 24-inch concrete. For 24-inch concrete, the max observed, which was two, has been

multiplied by 30 as resulting in a total of 6,572 Level B takes of harbor seal as shown in Table 9. For Level A harassment the same rationale was used. The area of the Level A harassment zone for 60-inch piles is 0.62 km², while the area of the Level B harassment zone is 1.7 km². The ratio of these two areas was multiplied by 176 seals resulting in 64 takes per day and a total of 513 authorized Level A harassment takes as shown in Table 6 and Table 10.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT ESTIMATE FOR PACIFIC HARBOR SEAL

[Per day]

Pile type	Level B zone (sq km)	Exclusion zone radius (m)	Level A zone, minus shutdown zone (sq km)	Estimated take per day	
				Level B take per day—total	Level A take per day—total
Vibratory Driving					
12-inch composite pile	165.62	15	0	176	NA
36-inch steel pipe pile	187.94	15	0	176	NA
20-inch steel pipe pile	87.57	10	0	176	NA
Timber/Concrete Pile Removal	5.33	15	0	176	NA
Impact Driving					
24-inch concrete pile	0.01	20	0	176	NA
60-inch steel pile	1.70	30	0.62	176	64.06
Impact Proofing					
36-inch steel pile	3.14	30	0.01	176	0.14

For impact pile driving of the 60-inch steel piles, the shutdown zones (30 meters) are notably smaller than the Level A harassment zone and the applicant has accordingly requested take by Level A harassment for harbor seal so that pile driving can be completed on schedule without frequent shutdowns. Individuals occurring within the Level A harassment zone but outside of the shut-down zone may experience Level A harassment, if they reside in that area for a long enough duration. However, these animals can be highly mobile, and remaining within the small injury zone for an extended period is unlikely, though it could occur.

California Sea Lion

Monitoring data from the SFOBB Project over a 17-year period was used to develop a density of 0.16 California sea lions per square kilometer. This density and the areas of the potential Level B Harassment zones are used in Table 7. Level A harassment take of this species is not requested, due to the small size of the Level A harassment zone for otariid pinnipeds,

TABLE 7—LEVEL B HARASSMENT ESTIMATE FOR CALIFORNIA SEA LION

[Per day]

Pile type	Level B zone (km²)	Level B take estimate (based on Central Bay density of 0.16 animals per km²)
Vibratory Driving		
12-inch composite pile	165.62	26.50
36-inch steel pipe pile	187.94	30.07
20-inch steel pipe pile	87.57	14.01
Timber/Concrete Pile Removal	5.33	0.85
Impact Driving		
24-inch concrete pile	0.01	0.01
60-inch steel pile	1.70	0.27
Impact Proofing		
36-inch steel pile	3.14	0.50

Harbor Porpoise

Based on monitoring conducted for the SFOBB project in 2017, an in-water density of 0.17 animals per square kilometer has been estimated by Caltrans for this species (NMFS 2018). Using this in-water density and the areas of potential Level A and Level B harassment, take is estimated for harbor porpoise as provided in Table 10. Level A harassment zone areas in which PTS could occur were determined by subtracting the shutdown zone areas from Level A harassment zone areas. Level A take is not requested for vibratory driving.

TABLE 8—LEVEL A AND LEVEL B HARASSMENT ESTIMATE FOR PACIFIC HARBOR PORPOISE

[Per day]

Pile type	Level B zone (km^2)	Exclusion zone (m)	Level A zone, minus shutdown zone (km^2)	Level B estimate Central Bay in-water—0.17 per km^2	Estimated Level A take per day
Vibratory Driving					
12-inch composite barrier pile	165.62	50	NA	28.16	NA
36-inch steel pipe pile	187.94	50	NA	31.95	NA
20-inch steel pipe pile	87.57	50	NA	14.89	NA
Timber/Concrete Pile Removal	5.33	50	NA	0.91	NA
Impact Driving					
24-inch concrete pile	0.01	50	0	0.01	0
60-inch steel pile	0.21	50	0.23	0.29	0.52
Impact Proofing					
36-inch steel pile	3.14	80	0	0.53	<0.01

Northern Elephant Seal

As noted above, elephant seal densities are expected to be extremely low. Therefore, Chevron did not use density data to calculate take. Additionally, this species was not observed by the marine mammal observers in the vicinity of the LWMEP during 2018 pile driving marine mammal monitoring activities. Therefore, Caltrans will conservatively assume that a lone northern elephant seal may enter the Level B Harassment area once per every three days during pile driving. As such, NMFS has authorized a total of 23 takes by Level B harassment. Level A harassment of this species is not expected to occur.

Northern Fur Seal

With weak El Niño conditions predicted to continue into spring and, perhaps, summer (NOAA 2019). There is a chance that fur seals could occur near the project area. Since there are no estimated at-sea densities for this species in San Francisco Bay, NMFS has authorized 10 takes of fur seals by Level B harassment. Level A harassment of this species is not anticipated.

Bottlenose Dolphin

As noted above, there are no estimated at-sea densities for this species in San Francisco Bay available for calculating a take estimate although they have been observed. Beginning in 2015, two individuals have been observed frequently in the vicinity of Oyster Point (GGCR, 2016; GGCR 2017; Perlman, 2017). The average reported group size for bottlenose dolphins is five. Assuming the dolphins come into San Francisco Bay once every 10 days, 30 takes would be anticipated, if the group enters the areas over which the Level B harassment thresholds may be exceeded. Therefore, NMFS has authorized the take of 30 bottlenose dolphins.

Gray Whale

Gray whales are most often sighted in the Bay between February and May. However, LWMEP pile driving is not expected to occur during this time, and gray whales are unlikely to be present at other times of year. However, should pile driving occur during the northward migration period, Chevron requests and NMFS has authorized two (2) Gray whale takes by Level B harassment.

The Level B Harassment estimates shown in Table 9 are based on the number of individuals assumed to be exposed per day, the number of piles driven per day and the number of days of pile driving expected based on an average installation rate.

TABLE 9—SUMMARY OF ESTIMATED TAKE BY SPECIES FOR 2019 WORK SEASON

[Level B harassment]

Pile type	Pile driver type	Number of piles	Number of driving days	Species						
				Harbor seal	CA sea lion	Harbor porpoise	Gray whale *	N elephant seal **	N fur seal *	Bottlenose dolphin *
60-inch steel pipe	Impact	8	8	1,408	2.18	2.31	NA	2.66	NA	NA
36-inch steel pipe pile ***.	Vibratory	8	4	704	120.28	127.80	NA	1.33	NA	NA
36-inch steel pipe pile.	Impact Proofing	2	1	176	0.50	0.53	NA	0.33	NA	NA
20-inch steel pipe pile.	Vibratory	8	4	704	56.04	59.56	NA	1.33	NA	NA
Concrete pile removal.	Vibratory	5	1	176	0.91	0.97	NA	0.33	NA	NA

TABLE 9—SUMMARY OF ESTIMATED TAKE BY SPECIES FOR 2019 WORK SEASON—Continued

[Level B harassment]

Pile type	Pile driver type	Number of piles	Number of driving days	Species						
				Harbor seal	CA sea lion	Harbor porpoise	Gray whale *	N elephant seal **	N fur seal *	Bottlenose dolphin *
24-inch concrete	Impact	39	30	60	0.3	0.04	NA	10	NA	NA
12-inch composite pile installation.	Vibratory	52	11	1,936	291.50	309.72	NA	3.66	NA	NA
Timber pile removal	Vibratory	106	9	1,584	7.68	8.16	NA	3	NA	NA
Total Take by Species (2019).				6,572	479	509	2	23	10	30

* Take is not calculated by activity type for these species, only a total estimate is given.
** Assumes 1 take every 3 days of driving.
*** Level B take for this pile type is based on vibratory driving only, as the method produces the larger Level B zone.

TABLE 10—SUMMARY OF ESTIMATED TAKE LEVEL A HARASSMENT FOR 2019 WORK SEASON

Pile type	Pile driver type	Number of piles	Number of driving days	Harbor seal	Harbor porpoise
60-inch steel pipe	Impact	8	8	512.49	4.18
36-inch steel pipe pile	Vibratory	8	4	0	0
36-inch steel pipe pile	Impact Proofing	2	1	0.14	<0.01
20-inch steel pipe pile **	Vibratory	8	4	0	0
Concrete pile removal	Vibratory	5	1	0	0
24-inch concrete	Impact	39	30	0	0
12-inch composite pile installation	Vibratory	52	11	0	0
Timber pile removal	Vibratory	106	9	0	0
Total Take				513	4

TABLE 11—AUTHORIZED TAKE AND PERCENTAGE OF STOCK OR POPULATION

Species	Stock	Authorized Llevel A takes	Authorized Level B takes	Percent (instances of take compared to population abundance)
Harbor seal	California	513	6,572	22.9
California sea lion	Eastern U.S		479	0.16
Harbor porpoise	San Francisco—Russian River	4	509	6.1
Northern elephant seal	California Breeding		23	<0.01
Gray whale	Eastern North Pacific		2	<0.01
Northern fur seal	California		10	<0.01
Bottlenose Dolphin	California Coastal		30	6.6

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, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

The following measures will apply to Chevron's LWMEP mitigation requirements:

Noise Attenuation—Bubble curtains will be used during all impact pile driving of 60-inch steel shell pile and 24-inch square concrete piles to interrupt acoustic pressure and reduce impact on marine mammals. The use of bubble curtains is expected to reduce underwater noise levels by approximately 7 dB, which greatly reduces the area over which the cumulative SEL threshold for Level A harassment may be exceeded. Bubble curtains would also decrease the size of the Level B harassment zone, reducing the numbers of marine mammals affected by potential behavioral impacts.

Daylight Construction Period—Work would occur only during daylight hours (7:00 a.m. to 7:00 p.m.) when visual marine mammal monitoring can be conducted.

Establishment of a Shutdown Zone—For all pile driving and removal activities, Chevron will establish shutdown zones. 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). A shutdown zone will be established which will include all or a portion of the area where SPLs are expected to reach or exceed the cumulative SEL thresholds for Level A harassment as provided in Table 12.

TABLE 12—SHUTDOWN ZONES FOR LWMEP

Project element requiring pile installation	Exclusion zones meters				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
Attenuated Impact Driving (with bubble curtain):					
60-inch steel pipe	840	30	50	30	35
24-inch square concrete	20	10	50	15	10
Impact Pile Proofing (no bubble curtain):					
36-inch steel pipe pile	100	10	80	30	10
Vibratory Driving/Extraction:					
12-inch Composite Barrier Pile	20	10	50	15	10
36-inch steel pipe pile	20	10	50	15	10
20-inch steel pipe pile	10	10	50	10	10
Wood and concrete pile extraction	10	10	50	10	10

Establishment of Monitoring Zones for Level A and Level B—Chevron will establish and monitor Level A harassment zones during impact driving for harbor seal extending to 450 meters and harbor seals and extending to 990 for harbor porpoises. These are areas beyond the shutdown zone in which animals could be exposed to sound levels that could result in Level A harassment in the form of PTS. Chevron will also establish and monitor Level B harassment zones 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 extraction as shown in Table 5. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones also 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. Level B harassment exposures will be recorded and extrapolated based upon the number of observed take and the percentage of the Level B harassment zone that was not visible.

10-Meter Shutdown Zone—During the in-water operation of heavy machinery (*e.g.,* barge movements), a 10-m shutdown zone for all marine mammals will be implemented. 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.

Soft Start—The use of a soft-start procedure 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. Chevron shall use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets.

Pre-Activity Monitoring—Pre-activity monitoring shall take place from 30 minutes prior to initiation of pile driving activity and post-activity monitoring shall continue through 30 minutes post-completion of pile driving activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zone, as described below.

If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving activities at that location shall be halted or delayed, respectively. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

Non-authorized Take Prohibited—If a species for which authorization has not been granted or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed.

Based on our evaluation of the Chevron's measures, as well as other measures considered by NMFS, we have determined that the mitigation measures

provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Visual Monitoring

The following visual monitoring measures are required as part of the issued IHA.

• One day of biological monitoring would occur within one week before the project's start date to establish baseline observations;

• Monitoring distances, in accordance with the identified shutdown, Level A, and Level B zones, will be determined by using a range finder, scope, hand-held global positioning system (GPS) device or landmarks with known distances from the monitoring positions;

• Monitoring locations will be established at locations offering best views of the monitoring zone;

• Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving and removal 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 and removal 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.

• Monitoring will be continuous unless the contractor takes a break longer than 2 hours from active pile driving, in which case, monitoring will be required 30 minutes prior to restarting pile installation;

• For in-water pile driving, under conditions of fog or poor visibility that might obscure the presence of a marine mammal within the shutdown zone, the pile in progress will be completed and then pile driving suspended until visibility conditions improve;

• At least two PSOs will be actively scanning the monitoring zone during all pile driving activities with one PSO stationed at the north end of the wharf monitoring the entire observable area with a special focus on the section between Castro Rocks and the wharf;

• Monitoring of pile driving shall be conducted by qualified PSOs (see below), who shall have no other assigned tasks during monitoring periods. Chevron shall adhere to the following conditions when selecting observers:

(1) Independent PSOs shall be used (*i.e.,* not construction personnel);

(2) At least one PSO must have prior experience working as a marine mammal observer during construction activities;

(3) Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

(4) Chevron shall submit PSO CVs for approval by NMFS;

• Chevron will 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.

Hydroacoustic Monitoring

Sound Source Verification (SSV) testing of would be conducted under this IHA. The purpose of the planned acoustic monitoring plan is to collect underwater sound-level information at both near and distant locations during vibratory pile extraction and installation and impact pile installation. Hydroacoustic monitoring would be conducted by a qualified monitor during pile extraction and driving activities as described in the Hydroacoustic Monitoring plan and will likely include the following during 2019:

• Acoustic monitoring for at least two (2) timber piles (vibratory);

• Acoustic monitoring for at least four (4) 24-inch square concrete piles (impact);

• Acoustic monitoring for at least two (2) 20-inch steel piles (vibratory);

• Acoustic monitoring for at least two (2) 36-inch steel piles (vibratory);

• Acoustic monitoring for at least two (2) 60-inch steel piles (impact); and

• Acoustic monitoring of two (2) 12-inch composite piles (vibratory).

Reporting Measures

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will include an overall description of

work completed, a narrative regarding marine mammal sightings, and associated 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;
- 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; and
- Level B harassment exposures recorded by PSOs must be extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

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, Chevron 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 West Coast 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 Chevron to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Chevron would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Chevron 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), Chevron would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast 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 Chevron to determine whether modifications in the activities are appropriate.

In the event that Chevron 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), Chevron would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, within 24 hours of the discovery. Chevron 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 and extraction associated with Chevron's LWMEP project as outlined previously have the potential to injure, disturb or displace marine mammals. Specifically, the planned activities may result in Level B harassment (behavioral disturbance) for seven marine mammal species authorized for take from underwater sound generated during pile driving and removal operations. Level A harassment in the form of limited PTS may also occur to animals of two species. No marine mammal stocks for which incidental take authorization are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. No serious injuries or mortalities are anticipated to occur as a result of Chevron's pile driving activities.

A limited number of animals (513 harbor seals and 4 harbor porpoises) could experience Level A harassment in the form of PTS if they stay within the Level A harassment zone during impact

driving of 60-inch steel and 36-inch steel piles. The degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments occurs, most likely the affected animal would lose a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment.

The Level B takes that are anticipated and authorized are expected to be limited to short-term behavioral harassment. Marine mammals present near the action area and taken by Level B harassment would most likely show overt brief disturbance *(e.g.* startle reaction) and avoidance of the area from elevated noise level during pile driving. However, this is unlikely to result in any significant realized decrease in fitness for the affected individuals or stocks for which take is authorized. While harbor seals from Castro Rocks may experience some temporary low-level behavioral impacts, the number of seals potentially affected is conservatively estimated at approximately 23 percent of the stock. This number, however, likely includes multiple takes of the same individuals. Furthermore, Castro Rocks and the LWMEP location represent a small portion of the range of the California stock of harbor seal. These two factors indicate that a much lower percentage of the stock would potentially be affected and, therefore, no adverse impacts to the stock as a whole are expected.

The project is not expected to have significant adverse effects on affected marine mammal habitat. The activities may cause fish to leave the area temporarily. This could impact marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the relatively short duration of driving activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Furthermore, there are no biologically important areas identified in the project area.

The likelihood that marine mammals will be detected by trained observers is high under the environmental conditions described for the project. The employment of the soft-start mitigation measure during impact driving would also allow marine mammals in or near the shutdown and Level A zone zones to move away from the impact driving sound source. Therefore, the mitigation and monitoring measures are expected to reduce the potential for injury and reduce the amount and intensity of behavioral harassment. Furthermore, the pile driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

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;
- Anticipated incidences of Level A harassment would be in the form of a small degree of PTS to a limited number of animals;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- No biologically important areas have been identified in the vicinity of the project area;
- The small percentage of the stock that may be affected by project activities (< 23 percent for all stocks); and
- Efficacy of mitigation measures is expected to minimize the likelihood and severity of the level of harassment.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the 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 13 depicts the number of animals that could be exposed to Level A and Level B harassment from work associated with Chevron's project. The analysis provided indicates that authorized take would account for no more than 23 percent of the populations of the stocks that could be affected. These are small numbers of marine mammals relative to the sizes of the affected stocks.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in 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 determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

No incidental take of ESA-listed species is expected to occur or

authorized for this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

As a result of these determinations, NMFS has issued an IHA to Chevron for conducting pile driving and removal activities at Chevron's Long Wharf from June 1, 2019 through May 31, 2020, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 30, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG300

2018 Marine Mammal Stock Assessment Reports

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

ACTION: Notice; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has considered public comments for revisions of the 2018 marine mammal stock assessment reports (SARs). This notice announces the availability of 46 final 2018 SARs that were updated and finalized.

ADDRESSES: Electronic copies of SARs are available on the internet as regional compilations at the following address: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.*

A list of references cited in this notice is available at *www.regulations.gov* (search for docket NOAA–NMFS–2018–0086) or upon request.

FOR FURTHER INFORMATION CONTACT: Lisa Lierheimer, Office of Protected Resources, 301–427–8402, *Lisa.Lierheimer@noaa.gov;* Marcia Muto, 206–526–4026, *Marcia.Muto@noaa.gov,* regarding Alaska regional stock assessments; Elizabeth Josephson, 508–495–2362, *Elizabeth.Josephson@noaa.gov,* regarding Atlantic, Gulf of Mexico, and Caribbean regional stock assessments; or Jim Carretta, 858–546–7171, *Jim.Carretta@noaa.gov,* regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States, including the U.S. Exclusive Economic Zone (EEZ). These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury (M/SI) from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every three years for non-strategic stocks. The term ''strategic stock'' means a marine mammal stock: (A) For which the level of direct human-caused mortality exceeds the potential biological removal level or PBR (defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population); (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) within the foreseeable future; or (C) which is listed as a threatened species or endangered species under the ESA. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific independent Scientific Review Groups (SRG), reviewed the status of marine mammal stocks as required and revised reports in the Alaska, Atlantic, and Pacific regions to incorporate new information.

The period covered by the 2018 SARs is 2012–2016. NMFS updated SARs for 2018, and the revised draft reports were made available for public review and comment for 90 days (83 FR 47137, September 18, 2018). NMFS received comments on the draft 2018 SARs and has revised the reports as necessary. This notice announces the availability of 46 final 2018 reports that were updated. The new individual draft report for the West Bay stock of common bottlenose dolphin stock was not finalized (see below). The final reports are available on NMFS' website (see **ADDRESSES**).

Withdrawal of the West Bay Common Bottlenose Dolphin SAR

NMFS is in the process of writing separate stock assessment reports for each of the 31 individual stocks contained in the Northern Gulf of Mexico Bay, Sound, and Estuary common bottlenose dolphin report. For the draft 2018 SARs, 2 new individual reports were completed separating out the West Bay and Terrebonne-Timbalier Bay Estuarine System stocks from the larger report. However, we are not finalizing the new individual report for the West Bay common bottlenose dolphin stock because the abundance estimate for this stock is based on a publication that is still currently in review (Litz *et al.,* in review). NMFS will include the updated abundance estimate for the West Bay stock in the draft 2019 report, once the Litz *et al.* publication is in press or has been published. To date, we have completed individual reports for five bottlenose dolphin stocks (Terrebonne-Timbalier Bay Estuarine System, Barataria Bay Estuarine System, Mississippi Sound/Lake Borgne/Bay Boudreau, Choctawhatchee Bay, and St. Joseph Bay). The remaining 26 stocks are included in the Northern Gulf of Mexico Bay, Sound, and Estuary Stocks report.

Comments and Responses

NMFS received letters containing comments on the draft 2018 SARs from the Aleut Community of St. Paul Island Tribal Government; the Makah Tribe; the Marine Mammal Commission; the North Slope Borough; 11 non-governmental organizations (Alaska Oil and Gas Association, Center for Biological Diversity, Conservation Law Foundation, Defenders of Wildlife, Friends of the Children's Pool, Hawaii Longline Association, The Humane Society of the United States, Oceana, Point Blue Conservation Science, Southern Environmental Law Foundation, and Whale and Dolphin Conservation); and 3 individuals. Responses to substantive comments are below; comments on actions not related to the SARs are not included below. Comments suggesting editorial or minor clarifying changes were incorporated in the reports, but they are not included in the summary of comments and responses. In some cases, NMFS' responses state that comments would be considered or incorporated in future revisions of the SARs rather than being incorporated into the final 2018 SARs.

Comments on National Issues

Minimum Population Estimates

Comment 1: The Marine Mammal Commission (Commission) comments the requirements of Section 117 of the MMPA require inclusion of a minimum population estimate (Nmin), a key factor for effective management of marine mammal stocks using PBR. Without an Nmin derived from recent data, PBR cannot be calculated and an ''undetermined'' value results, which is useless for management purposes. Including the revised 2018 draft SARs, an Nmin estimate is lacking for 91 of the 251 identified stocks (or 36 percent). The Commission understands that the primary reason for this shortcoming is a lack of resources (mainly access to vessel and plane platforms from which surveys are conducted) to collect the necessary information. The Commission appreciates the efforts NMFS has made to address this shortcoming by setting priorities across regions, coordinating requests for vessel time, and maximizing the data collected during these surveys (*e.g.,* Ballance *et al.* 2017). The Commission recommends that NMFS continue its efforts to prioritize and coordinate requests to secure the necessary survey resources across regions. In addition to these internal efforts, the Commission acknowledges and encourages NMFS' continued engagement and collaboration with other federal agencies that also require basic information on marine mammal stocks, through programs like the Atlantic Marine Assessment Program for Protected Species and similar programs in the Gulf of Mexico and the Pacific. Further, the Commission recommends that these marine assessment programs continue to include appropriate personnel, logistical capability, and vessel time to allow for photo-identification, biopsy sampling, satellite tagging and other efforts to augment and increase the value of the core line-transect survey data collected. These additional efforts will assist in delineating stock structure, confirming at-sea identification of cryptic species, and furthering understanding of marine mammal distribution, habitat use, and behavior, all important to the overall management goals of NMFS under the MMPA.

Response: We acknowledge the Commission's comment and will continue to prioritize our efforts for the collection of data to address outdated Nmin estimates.

Fisheries Observer Coverage

Comment 2: The Commission points out that adequate observer coverage continues to be an issue for many fisheries in most regions. In some cases, fisheries that have the potential to take marine mammals go unobserved entirely. For example, in Hawaii, several unobserved, state-managed line fisheries likely interact with endangered main Hawaiian Islands insular false killer whales. In Alaska, numerous unobserved, state-managed salmon gillnet fisheries pose a significant risk of interactions with harbor porpoises. In other cases, observed fisheries with known interactions with marine mammals have observer coverage but is inadequate (*e.g.,* less than 10 percent). Observer coverage in the Category I Mid-Atlantic gillnet fishery, which is known to take significant numbers of common bottlenose dolphins, common dolphins, and harbor porpoises, averaged less than five percent from 2012 to 2016. On the positive side, annual coverage increased steadily from two to eight percent over that period. Observer coverage in the Category II Mid-Atlantic bottom trawl fishery averaged under eight percent coverage over the same period, although once again annual coverage increased from five to ten percent during that period. The Commission recommends that NMFS continue to increase observer coverage in all fisheries with significant marine mammal bycatch that lack adequate coverage to provide reliable estimates of incidental take levels, with increased efforts to develop collaborative observer programs for state-managed fisheries, particularly in Alaska and Hawaii.

Response: NMFS is charged with fulfilling a wide range of requirements under the Magunson-Stevens Act, MMPA, and ESA, and regulations implementing those Acts. These mandates include ending overfishing and rebuilding fish stocks, protecting and recovering threatened and endangered species, reducing bycatch, enforcing laws and regulations, and combating illegal, unreported, and unregulated fishing internationally. In recent years, we have tried to meet performance goals ensuring that at least 38 U.S. fisheries continue to maintain adequate observer coverage through the deployment of at least 70,000 sea days observed nationwide. Allocation of observer coverage involves a variety of trade-offs that prevent each fishery from being observed each year, or at high levels of coverage.

In the case of the Hawaii line fisheries mentioned by the Commission, those fisheries are all Category III fisheries in the MMPA List of Fisheries (LOF). According to the 2018 LOF, only the Hawaii troll fishery has had documented marine mammal species and stocks incidentally killed or injured. In light of the high-priority marine mammal interactions in the Category I Hawaii deep-set longline fishery and the Category II Hawaii shallow-set longline fishery and American Samoa longline fishery, and limited observer budget resources, the Hawaii line fisheries cited by the Commission are not prioritized for coverage at this time.

While we are not operating the Alaska Marine Mammal Observer Program (AMMOP) due to lack of available resources to fund additional observations of the southeast Alaska salmon driftnet fishery, we are working to assess the needed resources and actively exploring options to identify additional resources for the AMMOP.

Coverage rates for the Category I Mid-Atlantic gillnet fishery are limited both by funding and practical limitations, although observer coverage has continued to increase in recent years. Obtaining higher coverage is challenging due to the geographically dispersed nature of this fishery. In 2017, the observer coverage for this fishery was 9.36 percent and generally higher in strata where marine bycatch occurred. Despite having observer coverage rates of 5 to 10 percent from 2012–2016, the Category II Mid-Atlantic bottom trawl fishery generally has observer coverage required to meet the target of a 30 percent coefficient of variation (CV) for marine mammal mortality estimates in that fishery. In light of the fact that the 30 percent CV target is generally being met with 5 to 10 percent observer coverage, increasing observer coverage for this fishery is not a high priority given limited observer budget resources.

Review of SARs for Strategic Stocks

Comment 3: The Commission comments that Section 117 of the MMPA directs NMFS to review at least annually, all stock assessment reports for strategic stocks. How NMFS addresses this requirement varies by region. For example, the 2018 draft reports for Alaska include proposed revisions, some minor, to the reports for all strategic stocks. While the other regions may have reviewed each strategic stock in 2018, not every strategic stock was revised and released for public comment. Some strategic stocks have SARs that have not been updated in more than five years, presumably because no significant new information has been published on abundance, distribution, human-caused serious injury and mortality, stock structure or habitat concerns for those stocks. To help ensure NMFS is aware

of new information relevant to all strategic stocks, the Commission recommends that NMFS include in the **Federal Register** notice, published when revised SARs are released, a specific request for new information for strategic stocks that were not updated that year. New relevant information could include peer-reviewed information on human-caused serious injury and mortality, fishery interactions, abundance, distribution, stock structure and habitat concerns, which could be incorporated into SARs, and other information that might draw attention to emerging concerns for a strategic stock.

Response: We appreciate the Commission's recommendation and will include in future **Federal Register** notices regarding draft stock assessment reports a request for new information relevant to all strategic stocks not updated in the current year.

Reconciling Humpback Whale Distinct Population Segments (DPSs) and MMPA Stocks

Comment 4: The Commission expresses concern that NMFS' review of the stock structure of humpback whales under the MMPA in light of the 14 DPSs identified under the Endangered Species Act (81 FR 62259, September 8, 2016) has now been underway for two years with no timetable for its completion. They state the lack of reconciliation between humpback DPSs and humpback stocks has had effects on other management decisions undertaken by NMFS, such as those related to the proposed draft negligible impact determination for the California thresher shark/swordfish drift gillnet fishery (<14 inch mesh) and the Washington/Oregon/California sablefish pot fishery, and those related to its response to the increased number of humpback whale entanglements on the west coast since 2014. The Commission recommends that NMFS take the necessary steps to conclude its review of humpback whale stock structure and revise the humpback whale SARs accordingly in the draft 2019 reports.

The Center for Biological Diversity, Humane Society of the United States, and Whale and Dolphin Conservation (CBD–HSUS–WDC) ask NMFS to elaborate on the status of the agency-wide moratorium on revising MMPA stock definitions and Point Blue Conservation Science expresses support for NMFS to clarify how the DPSs will be treated under the MMPA as quickly as possible.

Response: As described in our **Federal Register** notice requesting comments on the Draft 2017 Marine Mammal Stock Assessment Reports (82 FR 60181, December 19, 2017), we are currently in the process of reviewing stock structure under the MMPA for all humpback whales in U.S. waters, following the change in ESA listing for the species in 2016, to determine whether we can align the stocks with the DPSs under the ESA. Until such time that the humpback whale stock structure under the MMPA with respect to the ESA listing has been completed, we are retaining the current stock delineations and any changes in stock delineation or MMPA section 117 elements (such as PBR or strategic status) will be reflected in future stock assessment reports. Revising the stock structure for humpback whales is a high priority; however, the process of reviewing stock structure under the MMPA has taken longer than anticipated because we are evaluating the Agency's process for stock designation.

Nmin and PBR

Comment 5: The Alaska Oil and Gas Association (AOGA) comments the draft assessment for the Bering Sea stock of harbor porpoise is an example of long-standing inadequacy in the development of Nmin and PBR for stocks with abundance estimates older than eight years. As a result of applying the guidelines for preparing the SARs, NMFS does not use abundance estimates older than eight years to calculate either Nmin or PBR due to a decline in confidence in the reliability of an aged abundance estimate. Both Nmin and PBR are considered ''undetermined'' or ''unknown'' which AOGA asserts is a mischaracterization that makes using SARs for permitting and management decisions very difficult. They suggest if Nmin can be identified, even from a survey that is outdated, it should be used to calculate PBR using the best available science. This approach seems analogous to the practice of under-estimating a PBR based on a recent survey which covers only a portion of an animal's total range. AOGA recommends that the guidelines for preparing the SARs be revisited and even if the ''eight-year rule'' remains the threshold for estimating Nmin and developing current PBRs, the SAR should identify the most recent data and an estimate of PBR that results from those data. If necessary, the SAR can provide caveats regarding the data and include statements to acknowledge the potential risks of using such data. They comment this is a more reasonable approach than stating that ''PBR is considered unknown.''

Response: The topic of outdated abundance information was discussed at the 2011 workshop on the Guidelines for Assessing Marine Mammal Stocks (GAMMS). We proposed revisions to the GAMMS in 2012, including an approach to address outdated abundance estimates developed at the 2011 workshop. Due to the strenuous objections to the proposed approach received during public comment, we did not implement any changes regarding outdated abundance estimates at that time. We are currently working to develop an alternative approach, which would be included in the next revision of the guidelines. We will solicit public review and comment on any proposed revisions.

Comments on Alaska Issues

Alaska Native Subsistence Takes

Comment 6: The Commission comments that accurate information on the taking of marine mammals by Alaska Natives for subsistence and handicraft purposes is becoming increasingly important in light of the pace of climate changes occurring in the Arctic and sub-Arctic regions. Over the past several years, the Commission has repeatedly recommended that NMFS, in collaboration with its co-management partners, improve its monitoring and reporting of subsistence hunting in Alaska. The Commission appreciates the efforts made by NMFS in this regard with an increase in the 2018 draft SARs in the number of communities reporting hunting levels for bearded and ribbon seals (from 12 to 16 villages for the most recent five years). Nevertheless, this still represents only one-quarter of the 64 communities that may hunt ice seals. Therefore, the Commission continues to recommend that NMFS pursue additional mechanisms to gather reliable information on the numbers of marine mammals taken for subsistence and creating handicrafts, including by securing adequate funding for comprehensive surveys of subsistence use and Native hunting effort. The Commission encourages NMFS to continue to provide updated information whenever it becomes available, even if it pertains only to a limited number of villages or a subset of years.

Response: We agree that it would be beneficial to have more comprehensive information about the harvest numbers of species of Alaska marine mammals taken for subsistence purposes and for creating handicrafts. We provide co-management funding to Alaska Native organizations under section 119 of the MMPA, in part to monitor harvests and

report harvest numbers. The best available information is more comprehensive for some species (*e.g.,* bowhead whales, beluga whales, and northern fur seals) than for others (*e.g.,* harbor seals and ice seals). The shortcomings reflect the limited resources available to support harvest monitoring and reporting, as well as the large number of communities over a wide geographic area that subsistence hunt for species such as harbor seals, ice-associated seals, and Steller sea lions. Within the constraints of appropriations, we will continue to work with our co-management partners to monitor subsistence harvests and make that information publicly accessible as it becomes available.

Prey Availability

Comment 7: Oceana points out that in addition to estimating direct human-caused mortality, for a strategic stock, the SAR must identify ''other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey.'' They note that NMFS has not assessed the impacts of prey levels on strategic stocks, such as whether, or how, commercial fishing or any other factor may be decreasing the availability of prey and, consequently, causing declines or impeding recovery of strategic stocks and they request that NMFS assess how prey availability may be affecting humpback whale, Steller sea lion, and northern fur seal stocks.

Response: Overall, the NMFS Guidelines for Preparing Stock Assessment Reports (NMFS 2016) state if substantial habitat issues are important for strategic stocks, then a ''Habitat'' section should be used to summarize the existing data that indicate a problem. The guidelines also note that the SARs are not intended to be a forum in which to present significant new data and analysis. Instead, analyses are to be conducted and published separately, and such an analysis is not part of the SAR process itself.

There is no comprehensive information about how prey availability may be affecting humpback whale stocks. To address this question would require accurate data on prey abundance across the whales' entire range, prey consumption rates for individuals and populations, energetics of individual whales, and spatial and species overlap with commercial fishery catches. While the latter might be quantifiable, there is currently no way to obtain any reasonable data for the other variables involved, l*et al*one for the impact of changing environmental conditions on prey distribution and abundance.

The overall trend for most humpback whale populations found in U.S. waters is positive and points toward recovery (81 FR 62259; September 8, 2016), indicating that prey availability is not a major problem. However, a sharp decline in observed reproduction and encounter rates of humpback whales from the central North Pacific between 2013 and 2018 has been related to oceanographic anomalies and consequent impacts on prey resources (Cartwright *et al.* 2019), suggesting that humpback whales are vulnerable to major environmental changes.

The Western U.S. Steller sea lion SAR does summarize representative publications describing such potential threats in the ''Habitat Concerns'' section. It is also noted in the ''Current Population Trend'' section that the decline in pup abundance in the central Gulf of Alaska in 2017 was correlated with a dramatic decline in the abundance of Pacific cod in the area during the winter. There are no available data that definitively tie this decline to a drop in natality but the relationship is implied. As relevant studies become available they will be cited in future SARs.

A 3-year study to address whether prey availability during the breeding season may be a factor affecting Eastern Pacific northern fur seal recovery was initiated in 2018 by NMFS, in collaboration with the University of Washington and with support from the Lenfest Ocean Program. Study results, when published, will be cited in future SARs if relevant.

Steller Sea Lion, Western Distinct Population Segment

Comment 8: Oceana suggests the population trend, stock status, and habitat concern sections of the Steller sea lion assessment include a discussion on the observations and implications of localized extirpation of breeding sea lions from historical habitats.

Response: Under the MMPA, stock status is determined relative to the entirety of a stock. Steller sea lion population trend estimates are shown in the SAR by subregions to highlight trend differences, but these are not management units under the MMPA. Implications of declines in various regions within the western stock are discussed in context of population recovery under the ESA in the Steller Sea Lion Recovery Plan.

Comment 9: Oceana recommends that an assessment of mitigation measures for recovery of the Steller sea lion population in the Pribilof region is needed because climate change is a threat to Steller sea lions and their habitat and there have been several unusual mortality events in the last decade documented for marine mammals in Alaska. They note that Steller sea lion pup counts in the central and eastern Gulf of Alaska in 2017 were subsequently lower than prior years, indicating that prey availability from the warm conditions decreased pup production.

Response: There have been three Unusual Mortality Events (UMEs) declared in Alaska since 1991 (large whales in 2015; ice seals (ringed, bearded, and spotted) in 2011; and sea otters in 2006). Consistent with our response to Comment 8, the Pribilof population of Steller sea lions is within the western stock of Steller sea lions, so it is not assessed separately in the current SAR. We will cite published studies that discuss the potential consequences of climate change and harmful algal blooms on western Steller sea lions in the ''Habitat Concerns'' section of future SARs if we determine that these changes in the Alaska coastal environment are of concern for the western Steller sea lion stock.

Comment 10: Oceana comments that while the draft SARs include annual mortality and serious injury rates from federally-managed commercial fisheries monitored and reported by groundfish fisheries observers, these observer data are limited and there are only partial observer data in some of the trawl fisheries (*e.g.,* Gulf of Alaska flatfish trawl, Gulf of Alaska pollock trawl, and Gulf of Alaska Pacific cod trawl fisheries). As a result, they point out the majority of fishing activity, and the possible marine mammal interactions through that activity, are without monitoring or accountability. What is reported in the SARs is a yearly estimate, with unreported variance, extrapolated from observer data, which makes it difficult to evaluate the accuracy of those marine mammal mortality estimates. They recommend it would benefit marine mammal monitoring to have higher rates of observer coverage on fisheries that potentially interact with endangered species like the western DPS Steller sea lion.

Response: Estimates of variance are reported as CVs and are consistently available for Alaska commercial groundfish fisheries that host fisheries observers. In the current SARs, CVs are reported for the estimates of mean annual mortality and serious injury rates. We will consider including the CVs for the yearly estimates of mortality and serious injury in future SARs;

however, these CVs would only describe the uncertainty in the extrapolated estimates of mortality and serious injury based on observer data from randomly-selected monitored hauls; it is not possible to calculate CVs for mortality and serious injury from opportunistic data (*e.g.,* those collected from non-randomly selected hauls). The CVs for many observed fisheries are low because the proportion of the fleet that is observed is quite high. It is accurate that many Alaska fisheries that are known to have mortality and serious injury are observed at a low rate or are not observed at all. In general, the annual rates of mortality and serious injury reflected in the SARs are considered a minimum estimate for each stock. In Alaska, we place observers through an Annual Deployment Plan, which allows for flexibility as the priorities for observations change. We intend to observe state fisheries with at least an occasional level of mortality and serious injury of marine mammals if resources become available.

Northern Fur Seal, Eastern Pacific

Comment 11: Oceana recommends the northern fur seal assessment include an estimate of the direct or indirect mortality and loss of production that occurs from competition with commercial fisheries. The Aleut Community of St. Paul Island Tribal Government (ACSPI) requests that NMFS include an estimation of commercial fisheries' impacts on the Eastern Pacific stock's population, habitat, and prey through removal of prey or provide an explanation as to why it is not included.

Response: See response to Comment 7.

Comment 12: ACSPI comments the MMPA requires that NMFS ''describe commercial fisheries that interact with the stock, including . . . the estimated level of incidental mortality and serious injury of the stock by each such fishery on an annual basis [and] seasonal or area differences in such incidental mortality or serious injury . . .'' They note that NMFS does not include estimates of incidental mortality from reduction in prey in the appendices that include these descriptions.

Response: See response to Comment 7. Also, note that reduction in prey is not defined as an ''incidental mortality'' in the MMPA; incidental mortality is defined as mortality incidental to direct human activities.

Comment 13: AOGA notes the draft northern fur seal, Eastern Pacific SAR refers to the pup harvests on St. George Island from 2014 through 2016, and a total of 157 pups were killed over that period. The SAR states that there is no reason to believe that limiting mortality and serious injury to the level of the PBR will reverse the decline. They suggest the report would benefit from adding a brief explanation of the scientific analysis used to justify changes in the fur seal subsistence harvest regulations and any potential impacts as described in the recent Final Environmental Impact Statement published by NMFS (*https://www.fisheries.noaa.gov/action/notice-availability-final-supplemental-environmental-impact-statement*).

Response: We agree that the statement referenced by the commenter is unclear. The full sentence in the draft SAR stated: ''However, given that the population is declining for unknown reasons, and this decline is not explained by the relatively low level of known direct human-caused mortality and serious injury, there is no reason to believe that limiting mortality and serious injury to the level of the PBR will reverse the decline.'' We have replaced this sentence with the following sentence in the final 2018 SAR: ''The PBR calculation assumes mortality is evenly distributed across males, females, and each age class; but that is not the case with the subsistence harvest, which accounts for most of the known direct human-caused mortality. The subsistence harvest is almost entirely sub-adult males and male pups and, therefore, has a relatively low impact on the population due to the disproportionate importance of females to the population. Thus, non-breeding male-biased mortality up to the maximum levels authorized for subsistence use does not represent a significant risk to the Eastern Pacific northern fur seal stock.'' This issue is described in more detail in the recent Final Environmental Impact Statement cited by the commenter.

Ringed Seal

Comment 14: AOGA notes that information and updates on the Alaska stock of the ESA-listed Arctic subspecies of ringed seal are not provided in the 2018 SAR. Ringed seals are the most abundant marine mammal species in the Arctic throughout the year, and a species of major concern related to ongoing oil and gas activities in the U.S. Beaufort Sea and they are unclear why the report for this ''strategic'' stock was not reviewed and updated.

Response: The Alaska stock of ringed seals was listed as threatened under the ESA on December 28, 2012 (77 FR 76706). On March 11, 2016, the U.S. District Court for the District of Alaska issued a decision vacating the listing. A notice of appeal of the District Court decision was filed on May 3, 2016; and the listing was reinstated on May 15, 2018. Because the stock was not listed as threatened under the ESA or considered to be strategic under the MMPA when the draft 2018 SARs were prepared, we did not revise the ringed seal SAR in 2018; however, we will revise the SAR in 2019.

Beluga Whale, Cook Inlet

Comment 15: AOGA recommends NMFS include information in the beluga whale, Cook Inlet report that due to their continued small population size, the Yakutat Bay beluga whales remain part of the Cook Inlet stock and are still provided the same protections as the Cook Inlet stock including the limitations on hunting.

Response: We have added this information to the final 2018 Cook Inlet beluga whale SAR.

Comment 16: AOGA notes the draft Cook Inlet beluga whale SAR does not include the 164 observed dead stranded whales between 1998–2013 identified in the December 2016 Cook Inlet beluga whale ESA Recovery Plan. They suggest the average, unexplained mortality during this period of approximately 11 beluga whales per year may provide important context for the lack of recovery of this species.

Response: The mortality observed between 1998 and 2013 (Burek-Huntington *et al.* 2015) is described in detail in the ''Other Mortality'' section of the Cook Inlet beluga whale SAR. We will add information about this observed mortality to the Status of Stock section of the draft 2019 SAR.

Harbor Porpoise, Southeast and Other Alaska Stocks

Comment 17: The Commission expresses concern there remains appreciable uncertainty in the calculated PBR and estimated M/SI levels for the Southeast Alaska (SEAK) harbor porpoise stock due to: (1) Low observer coverage, (2) biased population estimates, and (3) insufficient data on stock delineation. In their comments on the 2017 draft SARs, the Commission recommended that NMFS address these uncertainties and although NMFS is working to understand and reduce the uncertainties, no significant changes were made in the 2018 draft SAR. The Commission urges NMFS to continue its efforts to address these issues.

Response: The PBR level of 12 for the Southeast Alaska harbor porpoise stock was estimated based on a survey that covered only a portion of the currently-recognized distribution of this stock,

and it includes commercial fishery mortalities or serious injuries that occurred far north of the surveyed areas. We are concerned about the Southeast Alaska harbor porpoise stock and are collecting additional information on stock structure and abundance to reduce uncertainties in the data available to manage this stock, and we have prioritized the Southeast Alaska drift gillnet fishery for additional observer coverage should resources become available.

Comment 18: The Commission notes the MMPA requires NMFS to develop and implement take reduction plans (TRPs) for all strategic stocks (section 118(f)(1)) that interact with a Category I or II fishery, subject to the availability of funding (section 118(f)(3)). Further, the MMPA directs NMFS to give the highest priority to developing and implementing TRPs for stocks for which M/SI exceeds PBR, the population size is small, and/or the population is declining rapidly. Although the SEAK stock of harbor porpoise meets the first two criteria, NMFS has not yet chosen to develop a TRP for this stock. Given the small size of the stock and the fact that it is experiencing an unsustainable level of take, the Commission recommends that NMFS apply the criteria under section 118(f)(3) to give this stock high priority, establish a take reduction team (TRT), and initiate the development of a TRP. The Commission recognizes that TRTs require a minimum of information regarding population size, status, fisheries interactions, and mitigation options to develop TRP recommendations. In this case, based on what is known about this and other harbor porpoise stocks, their interactions with gillnet fisheries in the eastern United States and Europe, and the availability of approaches to reduce bycatch numbers (*e.g.,* Bjørge *et al.* 2013, Orphanides and Palka 2013, Read 2013, Reeves *et al.* 2013), the Commission believes NMFS has sufficient information to proceed.

Response: As we have noted in our response to Comment 17, we are actively working to collect and analyze data needed to assess this stock. As the Commission rightly points out, a minimum amount of data and analyses are needed to support TRT deliberations; we are endeavoring to collect those data and provide those analyses. Further, MMPA section 118(f)(3) notes that we prioritize based on availability of funding and are currently implementing several other TRTs that address higher priority stocks and fisheries where the TRPs are not yet meeting MMPA goals (*e.g.,* ESA-listed North Atlantic right whales, Hawaii pelagic false killer whales, and Northern and Southern North Carolina Estuarine System bottlenose dolphins).

Comment 19: The Commission recommends that NMFS undertake analyses using harbor porpoise population data and state gillnet fisheries data from throughout the range of harbor porpoises in Alaska, and bycatch-rate data from comparable harbor porpoise populations from the full range of the species, to develop model-based estimates of the likely magnitude of harbor porpoise bycatch in the Gulf of Alaska and Bering Sea.

Response: We will investigate the feasibility of conducting the analyses recommended by the Commission with existing abundance data for these stocks; however, because the abundance data were collected between 1997 and 1999, the analyses would be based on 20-year-old data that may not reflect the current status of the population.

Humpback Whale, Central North Pacific

Comment 20: CBD–HSUS–WDC request that NMFS include in the Central North Pacific (CNP) humpback whale report the data presented and discussed at the November 2018 workshop that showed a decrease in Hawaii in overall humpback whale songs and a drop of nearly 80 percent in sightings of mother and calf pairs from 2014 to 2018.

Response: At the time the draft 2018 SARs were made available for public comment, no published information was available on this apparent change in winter distribution. NMFS will include information from a recently published paper (Cartwright *et al.* 2019) in the draft 2019 SAR.

Comment 21: CBD–HSUS–WDC note that in the CNP humpback whale report, one humpback injury was observed in the Hawaii shallow-set longline in 2015 that is not recorded in the report's paragraphs on ''Fisheries Information'' nor recorded in appendices giving fishery-specific information. The appendices to the Alaska stock assessment report do not include interactions of Alaskan stocks with Hawaii fisheries. Also, in 2017, the Pacific stock assessment report included only Appendix 3, a summary of stock information.

Response: Our marine mammal SARs contain information on human-caused mortality and serious injury; thus, the non-serious injury observed in 2015 in the Hawaii shallow-set longline fishery is not included in the Central North Pacific humpback whale SAR. However, publications by the NMFS Pacific Islands Fisheries Science Center (*e.g.,* Bradford 2018, Bradford and Lyman 2018) that are cited in the SAR contain details about the human-caused mortality, serious injury, and non-serious injury of humpback whales observed in Hawaii fisheries and/or reported to the NMFS Pacific Islands Region stranding network. The 2017 U.S. Pacific SARs contain only the reports and appendices that were revised in 2017. An appendix in complete versions of the U.S. Pacific SARs (*e.g.,* Carretta *et al.* 2017) describes fisheries in U.S. west coast and Hawaii waters, while appendices in the NMFS Alaska SARs describe fisheries in Alaska waters.

Comment 22: CBD–HSUS–WDC urge NMFS to include more detail about the impacts of increasing ambient noise on humpback whales in the CNP humback whale report. For example, a recent study of humpback whales in Glacier Bay National Park found that as ambient sound levels increased, humpback whales responded by increasing the source levels of their calls by 0.81 decibel (dB) for every 1 dB increase in ambient sound. In addition, for every 1 dB increase in ambient sound, the probability of a humpback whale calling in the survey area decreased by 9 percent. They suggest these details are especially important to guide management measures to protect whales from increasing ocean noise pollution.

Response: Given the lack of conclusive data on negative impacts of anthropogenic noise on the humpback whale stock, we believe that the existing text in the ''Habitat Concerns'' section of the Central North Pacific humpback whale SAR is sufficient.

Bowhead Whale

Comment 23: The North Slope Borough comments the bowhead quota from the International Whaling Commission (IWC) was changed in 2018 to take effect in 2019 and includes up to 67 strikes per year plus up to 33 previously unused strikes. They suggest because the new quota was broadly publicized, NMFS include a footnote in the bowhead whale report to reference the new quota that will take effect in 2019.

Response: We have added information about the new block quota for the period 2019 to 2025 to the final 2018 SAR.

Killer Whale, AT1 Transient

Comment 24: CBD–HSUS–WDC request that the final stock assessment report for the AT1 Transient killer whale reflect that in 2015 one killer whale, apparently from an Alaska transient stock, was entangled in a California commercial Dungeness crab trap. Given the uncertainty in the stock

definitions for Alaska killer whales and the overlap in range of the AT1 Transient stock with the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock, they urge NMFS to identify all fishery-related serious injury and mortality for Alaska transient killer whales in the stock assessment report for AT1 Transient whales. Further, a second killer whale of unknown stock origin was reported entangled in a California commercial Dungeness crab trap and was able to self-release. CBD–HSUS–WDC stress the importance that the stock assessment reports identify the killer whale stocks that are vulnerable to entanglement in Dungeness crab traps. Neither the death in 2015 nor the interaction in 2016 is reported in the killer whale stock assessment report.

Response: Based on genetic analysis, the killer whale that entangled and died in commercial California Dungeness crab pot gear in 2015 was identified as a transient killer whale with a mitochondrial DNA (mtDNA) haplotype that has been found in transient killer whales in the Pribilof Islands and western Aleutian Islands. However, the whale cannot be assigned to a specific stock because mtDNA haplotypes are unique to ecotypes of killer whales (*e.g.,* resident, transient, offshore) but not to populations. Therefore, we will assign this mortality to both the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient killer whale stock and the West Coast Transient killer whale stock in the next revisions of these SARs and in the NOAA Technical Memorandum that contains information on human-caused mortality and injury of NMFS-managed Alaska marine mammal stocks in 2013–2017 (Delean *et al.* in press). The mortality will not be assigned to the AT1 Transient killer whale stock, because none of the whales in this population are missing. The killer whale that entangled in and self-released from commercial California Dungeness crab pot gear in 2016 was photographically identified as a member of the West Coast Transient stock of killer whales, and this non-serious injury will also be included in Delean *et al.* (in press). We will add a statement to the draft 2019 AT1 Transient killer whale SAR noting that transient killer whales have entangled in pot gear in other areas and entanglement in this type of gear may be a risk for the AT1 Transient stock of killer whales.

Comments on Atlantic Issues

General Large Whale UMEs

Comment 25: CBD–HSUS–WDC point out that NMFS presented information at the most recent (2018) meeting of the Atlantic Large Whale TRT regarding three concurrent large whale UMEs that are ongoing. According to this agency presentation, they include one from 2016–2018 affecting humpback whales in the Atlantic (Cause: Undetermined; Contributory Human Interaction); another from 2017–2018 affecting North Atlantic right whales in the Atlantic (Cause: Preliminary Human Interaction); and one from 2017–2018 affecting minke whales in the Atlantic (Cause: Undetermined; Contributory Human Interaction and Infection). Each of these three concurrent large whale UMEs span from approximately 2016 to the present and extend from Atlantic Canada to Florida and involve 155 whales in total. CBD–HSUS–WDC comment that although NMFS has made public the preliminary or contributory findings of human interaction in all three investigations public, there is little mention made of this in a number of the affected SARs.

Response: The period covered by the 2018 SARs is 2012–2016. The humpback whale UME began in January of 2016 and the 2018 SAR includes language about the UME in the other mortality section. Any 2016 animals included in the humback whale UME that were determined to be anthropogenic are included in the mortality table. The recent right whale UME was established in June of 2017. Although the time frame of this UME is outside the focus of the 2018 SAR, during its review of the SAR at the Atlantic SRG meeting in February 2018, the SRG suggested it was important to mention the UME in the text of the report. Prior to publishing the draft right whale SAR for public comment, NMFS updated the SAR text, added a link to the UME web page, and noted that all 2017 events that are determined to be anthropogenic in nature will be included in the 2019 SAR. The minke whale UME started in January of 2017 and also was outside the time frame of the the 2018 minke whale SAR. We have added text to the final 2018 minke whale SAR that references the UME and will include any events that are determined to be anthropogenic in nature in the mortality table and calcuations in the 2019 SAR.

North Atlantic Right Whales

Comment 26: The Center for Biological Diversity, Conservation Law Foundation, Defenders of Wildlife, The Human Society of the United States, Southern Environmental Law Foundation, and Whale and Dolphin Conservation (the Organizations) suggest that while NMFS has included some updates in the ''Stock Definition and Geographic Range'' section of the North Atlantic right whale report, this section should be revised to condense the historical distribution information and include the significant changes in right whale distribution that have occurred since 2010.

Response: We agree with the Organizations that the ''Stock Definition and Geographic Range'' section of this report could use substantial updates and will plan to make these updates in the 2019 SAR.

Comment 27: The Organizations appreciate that NMFS includes a statement in the ''Stock Definition and Range'' section of the North Atlantic right whale report noting a habitat shift resulting in an increased use by right whales of Cape Cod Bay and decreased use of the Great South Channel. However, they request NMFS also re-evaluate the section which states that ''visual and acoustic surveys have demonstrated the existence of seven areas where western North Atlantic right whales aggregate seasonally: The coastal waters of the southeastern United States; the Great South Channel; Jordan Basin; Georges Basin along the northeastern edge of Georges Bank; Cape Cod and Massachusetts Bays; the Bay of Fundy; and the Roseway Basin on the Scotian Shelf (Brown *et al.* 2001; Cole *et al.* 2013).'' The Organizations do not dispute the accuracy of the data from the sources cited but note that these sources are between five and 17 years old. The Organizations assert NMFS itself has acknowledged that sightings in the Bay of Fundy have declined over the past 10 years, and the Agency has recently shifted significant resources to Canada, leaving many areas of the Gulf of Maine, including Georges and Jordan Basins, without meaningful effort to evaluate the current importance of those locations to right whales.

Response: We have added a more recent reference to this section in the 2018 final SAR (Mayo *et al.* 2018). We will re-evaluate and update the section if newer sources are available for the 2019 SAR.

Comment 28: The Organizations disagree with NMFS' conclusion that sightings south of Nantucket and Martha's Vineyard reflect only a ''modest late winter use'' of this area by the species, suggest that the waters south of Cape Cod are increasingly important, and ask the Agency to review its own use of Dynamic Area Management (DMA) declarations for these waters as additional confirmation of their significance. In light of distributional changes in right whale habitat noted since 2010, the Organizations comment it is important

for the stock assessment reports to reflect not only historic, but also recent sightings outside of ''traditional'' habitat use that may indicate shifting habitat use and broader distribution.

Response: As the period covered by the 2018 SARs is 2012–2016, any sightings made and DMA zones declared in 2018 are outside of the time frame of this report, but we will reflect any updates in the 2019 SAR. We have removed the word ''modest'' and changed Stone *et al.* to Leiter *et al.*

Comment 29: The Organizations also ask NMFS to consider omitting older information and updating the references used in the ''Stock Definition and Range'' section of the North Atlantic right whale report. For instance, according to the draft SAR, ''(h)igh-resolution (*i.e.,* using 35 microsatellite loci) genetic profiling has been completed for 66 percent of all North Atlantic right whales identified through 2001,'' for which a 2007 publication is cited. However, a 2009 publication by Frasier *et al.* states that high-resolution genetic profiles are available for greater than 75 percent of catalogued right whales.

Response: We agree with the Organizations and have updated the Frasier cititation in the final 2018 SAR. As noted above, we will re-evaluate and update this section and include newer sources if available in the 2019 SAR.

Comment 30: The Organizations comment it is unclear why Nmin was removed from the ''Population Size'' section of the North Atlantic right whale SAR and why the estimates provided here appear to differ from those provided by NMFS in its 2018 Technical Memo. According to the draft SAR, it appears Nmin was negated and changed only to ''N'' due to uncertainties around a probabilistic model and a median abundance of 451 individuals is provided. However, the NOAA Tech Memo, also citing Pace *et al.* 2017, estimates an ''overall species abundance of about 400.'' They suggest this lower number—the minimum estimate of animals likely alive—would seem more appropriate to provide as an Nmin.

Response: The ''min'' was originally removed because the author thought using Nmin would cause confusion with the Minimum Number Alive calculation used in previous SARs. We have corrected this in the final 2018 report and added Nmin back to the text because the sentence refers to the 60 percent lower bound common to most SARs but in this case results from the mark recapture estimation procedure. The Nmin of 445 reported in the 2018 SAR is the lower limit of the 60 percent credible limit on the median estimate of 451. This is the calculation established by the GAMMS (NMFS 2016). The ''overall species abundance of about 400'' reported in the Hayes *et al.* 2018 NOAA Tech Memo was calulated by a different method and took into account the 2017 mortalities, which are outside the time frame for the 2018 SAR.

Comment 31: The Organizations suggest the ''Current Population Trend'' section in the North Atlantic right whale report should be revised and updated to omit aging literature (*e.g.,* from the 1990s) that appears less relevant. They strongly suggest retaining the figures in this section, abbreviating historic information and using language taken from the NOAA Tech Memo which more clearly assesses the current status including the recent population decline.

Response: We discussed this issue with the Atlantic SRG at their 2018 meeting. The consensus was that while this SAR should continue to maintain its temporal integrity for abundance analysis and the case by case reporting of interactions, language would be added to the text referring to the 2017 mortalities. Prior to publishing the draft right whale SAR for public comment, we added the following text to the ''Annual Human-Caused Serious Injury and Mortality'' section of the report: ''*Although PBR analyses in this SAR reflect data collected through 2016, it should be noted that an additional 17 right whale mortalities were observed in 2017 (Daoust et al. 2017). This number exceeds the largest estimated mortality rate during the past 25 years. Further, despite the usual extensive survey effort, only 5 and 0 calves were detected in 2017 and 2018, respectively. Therefore, the decline in the right whale population will continue for at least an additional 2 years.*'' We will report the statistical analysis of population trends that include the 2017 mortalities in the 2019 SAR.

Comment 32: The Organizations comment in the ''Current and Maximum Net Productivity Rates'' section of the North Atlantic right whale report, it is not clear how NMFS arrived at a total of 443 calves born between 1990 and 2016. According to NOAA's 5-Year Review: Summary and Evaluation for North Atlantic right whales, ''(f)rom 1990–2014, 411 right whale calves were observed born, an average of 16.4 per year (with a standard deviation of 9.2). However, according to the 2017 Right Whale Report Card provided by the New England Aquarium, 17 calves were born in 2015 and 14 in 2016, which would raise the total to 442, not 443.

This section also includes a comparison of North Atlantic right whales to a counterpart species in the Southern Hemisphere. While we do not discount the information provided, it is unclear why NOAA did not rely instead on the more recent information in Corkeron *et al.* 2018. We understand the paper was not yet published when the draft report was made available to the public but note that it is not unprecedented for Stock Assessment Reports to include manuscripts ''in review,'' as evidenced by ''Henry *et al.* in review,'' cited in this draft.

Response: We have updated the total number of calves born between 1990 and 2016 to 442 in the final SAR. The Henry *et al.* paper, in review at the time we published the draft SAR, is the Serious Injury and Mortality Report for the same time period as the SAR and is on a parallel review track. The Henry *et al.* paper is currently in press and will be available shortly. In the interim, it will be provided upon request. The Corkeron *et al.* 2018 paper does cover more recent information but is more applicable to later SAR periods and will be included in the appropriate future SAR.

Comment 33: The Organizations appreciate the inclusion of a statement reflecting the unprecedented mortality of 17 right whales in 2017, the recent poor calving years, and the acknowledgement of a decline in the population but question whether any value of PBR other than zero is appropriate to use for this species when NOAA itself has determined the population is currently declining at 2.33 percent per year as a result of human causes.

Response: As directed in the MMPA, each SAR ''shall'' estimate the PBR level for the stock. Further, the statute states that PBR is calculated as the product of three elements: The minimum population estimate (Nmin); half the maximum net productivity rate (0.5 Rmax); and a recovery factor (Fr). In this case, PBR is calculated as 0.9.

Comment 34: The Organizations request NMFS to consider a comprehensive update of language in the ''Annual Human-Caused Serious Injury and Mortality—Background'' section of the North Atlantic right whale SAR to better reflect a more current view of anthropogenic impacts. For example, citations referencing analyses on entanglements of right whales are from 1999, 2001, and 2009; and, there are more recent information available. Additionally, they note there is no mention of sub-lethal impacts resulting from entanglements, in spite of available publications indicating this poses a significant population-level risk to the species.

Response: We will update the text and citations for this section in the 2019 report. Regarding sub-lethal impacts resulting from entanglements, we note that the van der Hoop *et al.* (2017) paper is cited in the 'Productivity Rates' section of the report: ''The available evidence suggests that at least some of the observed variability in the calving rates of North Atlantic right whales is related to variability in nutrition and possibly increased energy expenditures related to non-lethal entanglements (Rolland *et al.* 2016; van der Hoop *et al.* 2017).'' We will discuss with the Atlantic SRG how best to incorporate discussion of sub-lethal effects into the ''Annual Human-Caused Serious Injury and Mortality'' section of the North Atlantic right whale SAR.

Comment 35: The Organizations request NMFS include more recent studies in the ''Fishery-Related Mortality and Serious Injury'' section of the North Atlantic right whale report which can be used to better assess the impacts of serious injury resulting from fishery interactions. For example, van der Hoop *et al.* 2017 concluded that the duration of an entanglement is critical in determining the survival of the impacted individual and that chronic entanglement is a costly life history stage, not a short-term event. Pettis *et al.* 2017 found that severely entangled whales, along with lactating females, were more likely to exhibit declining body conditions than any other population segment. While they acknowledge that NMFS has set criteria for which serious injury and mortalities are determined, the Organizations stress consideration of these kinds of studies can help inform these criteria and better evaluate the overall impact of fishery interactions on this declining species.

Response: We are working with partners on ways to quantify chronic entanglement so it can be incorporated into the serious injury determination process. A challenge that we are trying to address is that the status of individual whales might change between resights. We are undertaking a review of the policy distinguishing serious from non-serious injury and will consider this type of information throughout that process.

Comment 36: The Organizations ask NMFS to update the ID # for two North Atlantic right whales (#3996, #3610) and review its assessment of a number of individual North Atlantic right whales (including #3692, #2810, #1142, #1306, [#unidentified], and #4140) to determine whether they should be added to the list of M/SI cases in Table 1.

Response: The Northeast Fisheries Science Center staff reviewed all these cases and their determinations regarding serious injury were later reviewed by experienced staff at another Fisheries Science Center, the Greater Atlantic and Southeast Regional Offices, and the Atlantic SRG, per NMFS Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals. NMFS staff looks for evidence of significant health decline post event.

Regarding whale #3996 and #3610, we have updated Table 1 in the final report to include the ID numbers. Three of the cases (#3692, #2810, and #1306) are ''inconclusive,'' or have evidence of health decline on par with rest of population. Regarding the unidentified whale located on Roseway Basin on September 13, 2015, while NMFS agrees that it is a serious injury, our experts cannot determine the source of the injury; because there is no agreement on vessel strike or entanglement, it cannot be tallied with other human interaction events. There are other instances where whales have serious injuries, but we do not know the source. For whale #1142 and #4140, we will include the updated information on the additional sightings in the 2019 report.

Comment 37: The Organizations agree with NMFS' conclusion that the species should remain listed as endangered and is in decline. However, according to the 5-Year Review: Summary and Evaluation of the North Atlantic Right Whale (*Eubalaena glacialis*), the species has been in decline since 2010, not 2011, as amended in the draft SAR.

Response: The 2010 abundance estimate was higher than the 2009 estimate. The 2011 estimate was lower than 2010, so we are considering 2011 as the first year with evidence of decline.

Humpback Whales—Gulf of Maine Stock

Comment 38: CBD–HSUS–WDC suggest that the ''Stock Definition and Geographic Range'' section of the Gulf of Maine humpback whale report should be revised to condense the outdated information and include a more thorough examination of recent changes in distribution and habitat use.

Response: We agree that the ''Stock Definition and Geographic Range'' section of this report could use substantial updates and will plan to make these updates in the 2019 SAR.

Comment 39: CBD–HSUS–WDC comment they understand that NMFS cannot rely on an estimate based on data more than eight years old and appreciate NMFS' development of a minimum number alive for the Gulf of Maine stock of humpback whales based on the Center for Coastal Studies (CCS) humpback whale catalog. They note that these data are collected by CCS for dedicated research purposes and include opportunistic sightings contributed to CCS by others. These data represent the most comprehensive catalog of this management stock and are provided to NMFS as a courtesy. CBD–HSUS–WDC urge NMFS to consider providing dedicated support for the long-term sustainability of this catalog, since NMFS relies on it for management of this stock.

Response: We agree with the commenter on the importance of the CCS' humback whale catalog and acknowledge your comment.

Comment 40: CBD–HSUS–WDC do not disagree with NMFS's assessment that the lack of carcass recovery and post-mortem examination confound conclusions regarding whether ship strikes or entanglements are more prevalent and note that NMFS does not provide in the Gulf of Maine humpback whale SAR any data on the analysis of carcasses recovered in the ongoing UME. They suggest it would be useful to include a more updated review for a UME stock to assess the number of cases in which necropsies have been conducted and what, if any, causes of death were determined. For example, NMFS has indicated elsewhere that at least 23 out of 60 examined carcasses were confirmed or suspected vessel strikes and at least four were confirmed or suspected entanglement cases. Since more recent data are available, they should be used (*e.g.,* data from 2017 are used in the North Atlantic right whale SAR). In addition, CBD–HSUS–WDC request that NMFS consider providing more detail in the ''Other Mortality'' section beyond ''causes of these UME events have not been determined.''

Response: While we included data from 2017 in the body of the right whale SAR as recommended by the Atlantic SRG, we did not yet include those data in the tables or in calculations. Any cases from the humpback whale UME that occurred in 2016 and were determined to be anthropogenic are included in Table 1 of the 2018 SAR. (See response to Comment 25.) For the 2019 SARs, we will review the UME language used in all reports and strive for more consistency. We will also provide some information on the number of cases necropsied, etc.

Comment 41: CBD–HSUS–WDC request NMFS clarify its conclusion in the ''Fishery-Related Serious Injuries and Mortalities'' section of the Gulf of Maine humpback whale report that 29

serious injuries were prevented by disentanglement between 2012 and 2016. For example, Spinnaker, an adult female humpback whale, was known to be entangled on at least four separate occasions and disentangled three times but ultimately died as a result of what appears to be her second gear interaction. CBD–HSUS–WDC is unclear as to how NMFS' evaluation of disentanglement success would have been applied in such a case.

Response: As noted above in our response to Comments 34 and 35, we do not currently have a method to address sublethal effects or more subtle/slow health decline for the assessment of long-term success. Under NMFS' Policy and Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals (NMFS 2012), we consider disentanglement to be successful unless there is additional information available on the condition of the animal such as a significant health decline. This was the case with Spinnaker. Her mortality was attributed to her 2014 entanglement event, based on evidence from her 2015 necropsy.

Comment 42: CBD–HSUS–WDC comment they understand the factors that dictate how NMFS evaluates a stock as strategic and greatly appreciate NMFS' clarification of the uncertainties in the case of Gulf of Maine humpback whales, including that entanglements are surely biased low and that the uncertainties associated with their assessment may lead to an incorrect determination of the stock's status.

Response: We acknowledge this comment.

Fin Whale

Comment 43: CBD–HSUS–WDC note that abundance estimates and range definition in the fin whale report are based on survey data no more recent than 2011, at least 7 years ago. According to NMFS' own guidelines, abundance data should be more recent than eight years with a ''worst case'' scenario of a decline presumed thereafter. At the 2018 meeting of the Atlantic SRG, NMFS informed the group that though Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys have been funded by multiple agencies, no surveys were planned for 2018. In light of well-known perturbations in ocean temperatures and prey resources, CBD–HSUS–WDC recommends NMFS make every effort to assure that depictions of the species' range and survey-derived abundance estimates do not become outdated since there may be shifts in the ranges of large cetaceans who are dependent on distribution of key forage fish, which can result in exposure to different sources of risk (*e.g.,* encountering fisheries in new areas).

Response: We acknowledge this comment and note that we will provide a new abundance estimate for this stock in the 2019 SAR. The new estimate will be based on 2016 surveys, and the sighting locations will be added to the sighting distribution map in that SAR. As a point of clarification, the GAMMS (NMFS 2016) state that ''unless compelling evidence indicates that a stock has not declined since the last census, the Nmin estimate of the stock should be considered unknown if 8 years have transpired since the last abundance survey.'' This is different from presuming a ''worst case scenario of a decline'' as stated in the comment.

Minke Whale

Comment 44: CBD–HSUS–WDC reiterate their comments on prior SARs, that where current information is readily available NMFS should incorporate that information into the most recent SAR to assure adequate depiction of the stock status. In the case of minke whales, the draft SAR makes no mention of a UME declared for this species in early 2017. In its public information page, NMFS states that ''[p]reliminary findings in several of the whales have shown evidence of human interactions or infectious disease,'' though a single definitive cause is not identified for all stranded animals. The declaration of an on-going UME should be added to the SAR either in the section on ''Annual Human-Caused Mortality and Serious Injury'' or in the section on ''Other'' mortality.

Response: See response to Comment 25.

Risso's Dolphins

Comment 45: CBD–HSUS–WDC point out that the abundance estimate for Risso's dolphins dates to 2011; and, as noted in a previous comment, according to NMFS' own guidelines, information on stock abundance should be more recent than 8 years. They recommend that NMFS update an abundance estimate as soon as possible so that it does not age out under GAMMS guidelines.

Response: We will provide a new abundance estimate for this stock in the 2019 SAR.

Long-Finned Pilot Whales

Comment 46: CBD–HSUS–WDC are concerned that the current mortality estimate for long-finned pilot whales is perilously close to the PBR. While they agree that the stock is considered ''non-strategic'' based on the most recent estimate of bycatch being below PBR, they recommend this may be temporary and bears watching. Because bycatch is so close to PBR and has fluctuated annually (often exceeding PBR), CBD–HSUS–WDC recommend that NMFS undertake an annual review of this stock's SAR rather than every 3 years as indicated under GAMMS for non-strategic stocks.

Response: We recognize CBD–HSUS–WDC's concern about long-finned pilot whales and are aware of the fluctuations of bycatch around PBR for this stock. Because of this situation, we have updated the WNA long-finned pilot whale report in 18 of the 20 existing SARs and will continue to closely monitor the bycatch of pilot whales.

Short-Finned Pilot Whales

Comment 47: CBD–HSUS–WDC stress the need to re-assess structure for short-finned pilot whales in both the Atlantic and in the Gulf of Mexico. They note at the Atlantic SRG's meeting in 2018, the SRG recommended that NMFS ''. . . consider new data, including satellite-linked telemetry and photo identification, together with molecular evidence of stock structure, in a new analysis. In addition, the SRG recommends that both Centers prioritize the collection of new information that could contribute to the question of stock structure of this species, by deploying satellite linked transmitters, and collecting photo-identification images and biopsy samples for genetic analyses during upcoming Gulf of Mexico Marine Assessment Program for Protected Species (GoMMAPPS) and AMAPPS III cruises.'' CBD–HSUS–WDC understand that limits on resources result in limits on updating stock information but assert up-to-date information is key to the proper management of fishery interactions with short-finned pilot whales to assure that fishery-related bycatch is not exceeding the PBR of a properly-defined stock. They recommend NMFS prioritize collection of information to assure the stock is properly defined and assessed.

Response: In planning discussions with BOEM and the U.S. Navy regarding GoMMAPPS and AMAPPS, we raised the need for additional data collection to evaluate short-finned and long-finned pilot whale stock structure and movement patterns. However, this was not identified as a priority for these programs. The GoMMAPPS project field work is complete as of the Fall of 2018, and the potential for AMAPPS III is currently under discussion. We will continue to identify pilot whale stock structure as an important information need in these discussions. In addition,

the Southeast Fisheries Science Center is currently working to revisit short-finned pilot whale stock structure using previously collected samples and next generation genetic sequencing techniques.

Comment 48: CBD–HSUS–WDC note with concern that NMFS states in the short-finned pilot whale SAR that ''The total annual human-caused mortality and serious injury for this stock during 2012–2016 is unknown'' although it also states that there were 168 takes attributed to the longline fishery. They strongly encourage NMFS to improve its ability to ''predict the species of origin (long-finned or short-finned pilot whale) for each bycaught whale'' which it indicates in the SAR is hampering its ability to determine total anthropogenic mortality for both species.

Response: The total annual human-caused mortality and serious injury for this stock is unknown primarily because there was a self-reported take in the unobserved hook and line fishery in 2013, rendering the estimate of fishery-caused mortality an underestimate. While there remains some uncertainty in the assignment of some bycatch interactions to species, this is not a factor in describing total human-caused mortality and serious injury as ''unknown.''

White Sided Dolphin

Comment 49: CBD–HSUS–WDC comment that given the similarities of fisheries in Canada to those in the northeast United States, it is troubling each year to read that there are no recent data regarding Canadian bycatch of white sided dolphin in its fisheries, though stranded animals are reported to evidence entanglements. They suggest it is important to work with the Canadian government to encourage better tracking of lethal bycatch.

Response: We agree with CBD–HSUS–WDC's concern and continue to engage with the Canadian government to receive data on the bycatch of white sided dolphin in Canadian fisheries.

Short Beaked Common Dolphin

Comment 50: CBD–HSUS–WDC point out the short beaked common dolphin abundance estimate is aging and needs to be updated, particularly as NMFS has used only the U.S. portion of this stock's range, ''and a small portion in Canadian waters.'' Given the range of this species well into Canada, and a key uncertainty in population estimates is the number of animals in Canadian waters, they suggest the United States should be working more closely with the Canadian government to facilitate cross-border collaboration in understanding trans-boundary movements and both abundance and risks on both sides of the border for this stock. They note during the 2018 meeting of the Atlantic SRG, there was discussion of notable bycatch of this species in the monkfish fishery in Canada and that does not appear to have been captured in the SAR which only provides a ''pers. comm'' reporting a Canadian take in 2012.

Response: We will include a new abundance estimate for this stock in the 2019 SAR, which will include any available Canadian data. Unfortunately, the Canadian fishery bycatch data are currently not available to us, and we are only receiving unpublished reports.

Rough-Toothed Dolphin

Comment 51: CBD–HSUS–WDC appreciate the substantial updates to the rough-toothed dolphin SAR. They note that the minimum population estimate of 67 (and a PBR of less than 1) was statistically derived from a single sighting during a survey that NMFS indicates covered only a portion of the stock's range, making this estimate highly uncertain. Though fishery-related mortality of rough-toothed dolphins during the time period of this SAR was said to be zero, NMFS acknowledges that longline fisheries that are similar to west coast fisheries (*e.g.,* in Hawaii) are known to interact with the species, as have various purse seine fisheries. CBD–HSUS–WDC are concerned that observer coverage on some of these similar east coast fisheries may be insufficient to capture mortality of animals of this species whose abundance remains poorly understood.

Response: Rough-toothed dolphins are very rarely seen during NMFS surveys in the Atlantic, creating a challenge for estimating abundance with confidence. The SAR is transparent about the estimate being highly uncertain. We acknowledge that observer coverage in the longline fishery is likely insufficient to reliably quantify interactions with rarely encountered species.

Harbor Porpoise

Comment 52: CBD–HSUS–WDC note the most recent estimate of abundance for harbor porpoise was derived from a 2011 partial range survey. NMFS acknowledges that not all the range was covered at the appropriate time of year nor did the extant estimate account for availability bias as animals along the trackline may be submerged. Though this results in a negative bias and bycatch is well below PBR, they urge NMFS to update abundance range-wide since the low bycatch rate appears to be a result of depressed gillnet effort due to quota restriction on groundfish and could rise if catch quotas are raised.

Response: We will include a new abundance estimate for this stock in the 2019 SAR. The new estimates will be based on both U.S. and Canadian surveys and will constitute a more complete coverage of harbor porpoise range in the Western North Atlantic. The new abundance estimates will account for availability bias for all species, including harbor porpoises.

Gray and Harbor Seals

Comment 53: The Commission comments that the 2018 draft SARs continue to lack reliable, up-to-date information on abundance, distribution, and movements between Canadian and U.S. waters for the western North Atlantic stocks of gray and harbor seals. They stress the need for such information is becoming more pressing, especially for gray seals as their numbers and reports of conflicts with fisheries increase. The Commission remains concerned that the outdated or incomplete abundance and bycatch estimates currently available hamper NMFS' ability to competently manage those stocks. Therefore, they recommend NMFS secure the necessary resources and strengthen existing collaborations to (1) plan and execute comprehensive aerial surveys, including collecting data necessary to estimate appropriate haul-out correction factors for both stocks, and (2) increase efforts to understand and reduce bycatch for gray seals in particular. Studies on seal diet, movement patterns and fisheries interactions will contribute additional information vital to successful management of these stocks.

Response: We agree with the Commission and note that we have been attempting to fill the information gaps as best as possible with the resources we have available. The 2018 SARs report a minimum estimate of gray seal abundance during the breeding season in U.S. waters, based on an extrapolation from pup counts obtained from aerial surveys. The multiplier used to extrapolate pup counts to total population size (4.3) is based on age-structured population models developed with known life history information from the same stock in Canadian waters. While use of the multiplier assumes these same life history parameters pertain to the U.S. portion of the stock, the 4.3 value does fall within the range of other adult to pup ratios suggested for pinniped populations, and uncertainties are noted in the SAR chapter.

We recognize that this approach does not take into account changes in abundance throughout the year as animals move between the United States and Canada. We have submitted several proposals to partners to tag gray seals but to date none have been accepted. Given limited resources and competing priorities, it has been difficult to secure these kinds of resources internally. Due to the high cost of studying seal movements via satellite tags, we have also explored studying movements via acoustic tags. We began a pilot study in 2017 under our previous research permit, but then were denied use of continuing the research when our permit was renewed, due to MMC concern about the impact of acoustic tags on the animals.

Despite the difficulty we are having in securing the necessary resources to fully investigate the abundance, distribution, and movements between Canadian and U.S. waters for the western North Atlantic stocks of gray and harbor seals, we are making some progress. In May 2018, we conducted an aerial survey of harbor seals which will be used to update the previous estimate reported in the SARs. We also conducted aerial surveys after the 2018 UME. We collaborated with a non-profit organization to study the movements of gray seal pups and successfully deployed 11 satellite tags in 2019. We also surveyed the gray seal pupping colonies in 2019. The results from this and other recent seal research will be incorporated into the SAR once the data have been reviewed and published.

With respect to bycatch reduction, we collaborated with our research partners to study pinniped depredation in the gillnet fishery in 2018 and have recently begun communications with another group to develop a proposal to study the effectiveness of pingers in reducing bycatch. We are investigating diet via hard parts in the stomachs of bycaught animals, and via fatty acids in blubber.

In summary, we believe the Commision's comment encapsulates the goals of our seal ecology and assessment group. We continue to try and secure resources to achieve these goals but get pushback in the face of competing conservation needs. Despite this, we continue to make small headway in studying the abundance, distribution, movements, diet, and bycatch of gray and harbor seals.

Harbor Seals

Comment 54: CBD–HSUS–WDC strongly urge NMFS to update pinniped SARs to better reflect current knowledge of the range of the species. In the harbor seal SAR, the section on Stock Definition and Range They recommend the ''historic'' data (often 20 or more years old) should be abbreviated and replaced with more recent information on regular habitat use well outside of the area outlined in the section on distribution, and the legend that explains the map shading, that the areas from New Jersey south represent only ''stranding records'' is outdated and incorrect. CBD–HSUS–WDC also note that internet posts by NOAA show the agency is tracking harbor seals regularly ranging well into the mid-Atlantic. The New Jersey Wildlife Foundation documents a major haul out in Great Bay, NJ, with over 120 harbor seals typically hauled out in the winter. The Virginian-Pilot reports dozens hauled out at the mouth of the Chesapeake Bay each winter. Seals, including harbor seals, regularly strand in New Jersey and other parts of the mid-Atlantic, often as very small pups, indicating the possibility of pupping well south of New England. Thus, this SAR should be revised to more accurately reflect current distribution.

Response: We have updated the range map in the final 2018 harbor seal SAR to change the ''stranding records only'' portion to indicate ''seasonal designation.'' The period covered by the 2018 SARs is 2012–2016 so we will include the tagging work performed in 2018 in the appropriate future reports. We will update the text and references in the next SAR to reflect the seasonal presence of harbor seals in the mid-Atlantic.

Comment 55: CBD–HSUS–WDC recommend both the harbor seal and gray seal SARs be updated to include information about a long-closed UME for these stocks that ended in 2013, and an ongoing UME affecting these stocks which began prior to July 2018. This current UME has cost the lives of over 1,300 harbor and gray seals in the northeastern United States.

Response: We believe this comment pertains to the 2011 UME (see *https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events*), and we have referenced this UME in the harbor seal and gray seal chapters. The period covered by the 2018 SARs is 2012–2016 so we will include the 2018 UME in the appropriate future reports.

Gray Seal

Comment 56: CBD–HSUS–WDC recommend NMFS update the text and range map for gray seals and point out the map shows movement south of New Jersey as ''stranding records only,'' but there are popular press reports and photographs of animals hauled out near Chesapeake Bay during the winter. They also note that, though cited in the harbor seal SAR, the gray seal SAR lacks a citation to published work by Johnston *et al.,* 2015, which contains useful information regarding strandings and bycatch of this species.

Response: We acknowledge this comment and have reviewed the gray seal range map. At this time we have not made any changes, as we do not have new peer-reviewed literature to include in the text which would support the extension of the range map. However, we will be discussing improvements to the SAR range maps in general at the SRG meetings and will revisit this issue at the time. As to Johnston *et al.* 2015, we do not feel that the paper adds new information that is not already stated or reported in the SARs; and, while much of the discussion points in that paper are interesting, they are speculations to explain patterns in the data.

Hooded Seal

Comment 57: CBD–HSUS–WDC point out that the hooded seal SAR lacks a range map. While they acknowledge that much of the distribution and greatest habitat use is outside of the United States, they suggest there is increasing documentation of hooded seals' perhaps extra-limital use of U.S. waters in the winter that may be helpful to include in a range map.

Response: A range map has not been included in this chapter due to the extra-limital presence of hooded seals in U.S. waters. However, we can revisit the possibility of adding in reported bycatch or sightings information when we discuss general improvements to the range maps at the upcoming SRG meetings.

Common Bottlenose Dolphin

Comment 58: The Commission comments the 2018 draft SARs for Bay, Sound, and Estuary bottlenose dolphin stocks include two new reports for the Terrebonne-Timbalier and West Bay stocks. Although the Commission is encouraged to see NMFS incorporating new data, it also is concerned about the references made to publications ''in prep.'' or ''in review'' to support some of the key information in the new SARs. The Commission supports the use of the best available science and does not wish to delay publication of new or updated SARs unnecessarily, but the information on which a draft SAR is based needs to be available to the public to enable informed review. Labelling a report as ''in review'' suggests that the underlying analysis has been completed and submitted for publication, while ''in prep.'' suggests that the analyses are still

ongoing and could be changed prior to publication. As such, reliance on such information might be premature and generally should not be considered the best available science. Therefore, the Commission recommends that, unless exceptional circumstances warrant otherwise, NMFS refrain from publishing draft SARs for public comment that rely on reports or analyses that are still ''in prep.'' The Commission further recommends that NMFS carefully consider whether it should base draft revisions to the SARs being considered for public comment on analyses that are still ''in review.'' At a minimum, NMFS should make every attempt to make the underlying reports/publications available to the public during the comment period.

Response: We agree with the Commission that further standardization is needed with respect to finding a balance between providing new information for SARs and publication requirements. We strive to cite only peer reviewed literature in SARs, to the extent possible; occasionally we will include papers that are ''in review'' or ''in press'' in draft SARs with the expectation that the manuscripts will be published by the time the SAR is final. To that point, we have updated the Terrebonne-Timbalier Bay Estuarine System SAR with the final citation, and we have retracted the West Bay SAR in its entirety because one key document remains in peer-review and is not yet published.

Comment 59: CBD–HSUS–WDC note that NMFS provided redlining to illustrate changes made to most of the revised SARs, but the three stocks of bottlenose dolphins (*Tursiops truncatus*) in the Gulf of Mexico (*i.e.,* Terrebonne-Timbalier Bay Estuarine System stock, the West Bay stock and the Norther Gulf of Mexico Bay, Sound and Estuary stocks) lacked redlining to note changes from prior versions. They request for future iterations of all stocks, NMFS use redlining for all draft revised SARs as a courtesy for reviewers.

Response: We provide track changes for all revised draft SARs to make it easier for reviewers. The Terrebonne-Timbalier Bay Estuarine System SAR and the West Bay SAR were newly drafted with no prior versions. For the Northern Gulf of Mexico Bay, Sound and Estuary Stocks SAR, we did submit the revised SAR with changes tracked (*i.e.,* red-line version), and the version appears with changes tracked within the pdf draft that was posted online (U.S. Atlantic and Gulf of Mexico Draft Marine Mammal Stock Assessment (PDF, 257 pages)) at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

Comment 60: CBD–HSUS–WDC express disappointment that NMFS did not include any text in the bottlenose dolphin stock assessments for a number of stocks currently affected by the ongoing UME declared by the agency. The elevated death toll, which began in 2017, has resulted in the mortality of over 100 dolphins in southwest Florida as a result of a red tide bloom (brevetoxin). Several resident stocks could have been affected, given the size of the area involved in the event since documented mortalities began and the affected has changed and/or grown. Since the information was public during the period of time in which SARs were being revised, the SARs for these stocks should have been revised on the basis of the availability of new information documenting adverse impacts on the stocks. CBD–HSUS–WDC also recommend the report be revised to include that the origins of the red tide are primarily human-related.

Response: Elevated dolphin mortalities did not begin until July 2018, which is outside the scope of the 2018 reports. We will include future updates on the UME event in the appropriate bottlenose dolphin SARs.

Common Bottlenose Dolphin: Terrebonne-Timbalier Bay Estuarine System Stock

Comment 61: CBD–HSUS–WDC note in the common bottlenose dolphin Terrebonne-Timbalier Bay Estuarine System stock SAR that a cited reference ''capture-recapture photo-ID surveys conducted during June 2016 (Litz and Garrison in prep)'' is still not available and listed as ''in prep'' over two years later. They stress these data should have been analyzed with at least a NOAA Tech Memo, since this stock is one of those affected by the Deepwater Horizon oil spill, and tracking its abundance and vital rates should be a priority, as would providing the public with that information.

Response: The Terrebonne-Timbalier Bay Estuarine System Stock SAR was drafted specifically because this stock is a priority, and NMFS does not want to delay making the most up-to-date information available to the public. The publication describing the survey and abundance estimate is now published, and we have updated the final 2018 SAR with the citation.

Comment 62: CBD–HSUS–WDC are concerned that the common bottlenose dolphin Terrebonne-Timbalier Bay Estuarine System Stock stock may be interacting with the shrimp fishery at notable levels and recommends NMFS treat this stock as a ''strategic stock'' due to the high likelihood that their PBR is being exceeded. They further stress that NMFS must work expeditiously to stratify data in a way that allows for an understanding of the magnitude of impact to this stock, and should be updating the SAR annually until data can clearly show that it is not strategic.

Response: We acknowledge CBD–HSUS–WDC's concern and note this topic was discussed at length at the 2018 Atlantic SRG meeting. We requested the Atlantic SRG's advice on how to handle possible mortality from the shrimp trawl fishery given the limitations of available observer program data and the resulting text follows from the recommendation of the Atlantic SRG. Therefore, we revised the SAR based on the Atlantic SRG's recommendation. We believe it is unlikely all of the extrapolated bycatch from the state of Louisiana would occur within the boundaries of Terrebonne-Timbalier Bay. We are working to improve the analyses so that an extrapolated estimate specific to each bay/sound/estuary will be available in the future.

Regarding stock status, this stock does not meet the statutory definition of strategic (*i.e.,* ESA-listed, declining and likely to be listed as threatened in the forseeable future, or serious injury/mortality exceeds PBR). Thus, the stock is determined to be ''not strategic.'' However, we have indicated concern for the stock in the SAR.

Common Bottlenose Dolphin: West Bay Stock

Comment 63: CBD–HSUS–WDC comment the common bottlenose dolphin West Bay stock is another small stock (less than 50 members) in the Gulf of Mexico, occupying a small defined area within the Galveston Bay estuary and with a PBR of less than 1.0. Fishery-related mortality is stated to average 0.2 per year, or 20 percent of the PBR. However, NMFS acknowledges that all potentially interacting net and trawl fisheries are not observed by the federal observer program and stranding data indicating fishery-related interactions were not considered since, among other reasons, they cannot be attributed to a specific fishery. This stock is also within the operating range of the shrimp trawl fishery. Because the observer program does not extend into the Bay, Sound and Estuarine waters, and the inappropriate spatial resolution of data relative to this stock's distribution, NMFS could not provide an estimate of interactions and therefore legitimately provide a ''zero'' estimate. They believe

that this small stock, with risk-prone fisheries operating in its range, should be considered strategic—with annual updates of its stock assessment—until such time as data show that it is not in fact sustaining mortality in excess of its PBR.

Response: The West Bay SAR has been retracted from the 2018 SARs because one document remains in peer-review (see response to Comment 58). We agree the West Bay Stock is a small stock, and this issue was discussed at the 2018 Atlantic SRG meeting. We must follow the statutory criteria for determining strategic status, and this stock does not meet the criteria to be designated as strategic. A lack of information on human-caused mortality is an insufficient basis for designation as strategic.

Common Bottlenose Dolphin: Northern Gulf of Mexico Bay, Sound and Estuary Stocks

Comment 64: CBD–HSUS–WDC reiterate their comment from previous years that NMFS must make a better effort to provide individual SARs for the common bottlenose dolphin Northern Gulf of Mexico Bay, Sound and Estuary individual stocks. While they applaud progress made over the past few years, they stress more needs to be done to provide updated population and mortality estimates as well as assuring that the range of each stock is properly defined.

CBD–HSUS–WDC note that the St. Joseph Bay stock remains lumped with others in this region (identified as stock B–11). Moreover, there is a confusing/cryptic footnote for this stock in Table 1 in the SAR to ''[p]lease see the individual stock assessment report for this stock.'' Yet we see none for this stock on the NMFS site listing all marine mammal SARs that were not necessarily updated. They comment the reference should be corrected; or, if there is an individual SAR for this stock, it should be listed on the NMFS website at which the final SARs can be accessed.

Response: There is an independent SAR for the St. Joseph Bay Stock, which was first included in the 2011 SARs. The report is available on our website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock.*

Comment 65: CBD–HSUS–WDC comments that the overarching common bottlenose dolphin SAR for Bay, Sound and Estuarine stock was updated to provide estimates of ''years to recover'' (absent additional non-natural mortality) from the Deepwater Horizon event. For the Mississippi River Delta stock it was listed as 52 years and for the Mobile Bay/Bonsecour Bay stock as 31 years. However, according to Dr. Randy Wells (pers. comm.), there may also be additional estimates of ''years to recovery'' estimates for other stocks affected by the Deepwater Horizon spill, including the hard-hit Barataria Bay stock. If so, CBD–HSUS–WDC recommend these estimates for all stocks should be provided in the SAR.

Response: The information on the ''years to recover'' from the Deepwater Horizon event was included in the overarching Bay, Sound, and Estuary SAR for the Mississippi River Delta and Mobile Bay/Bonsecour Bay stocks because they currently do not have their own independent SARs. However, the Barataria Bay Estuarine System Stock has its own independent SAR, and extensive information regarding impacts of the DWH spill are included therein.

Comments on Pacific Issues

Large Whales

Comment 66: The Commission recognizes NMFS' responsiveness in addressing the recommendations it made on the 2017 draft SARs. In particular the Commission acknowledges the inclusion of 2018 draft SARs for blue and humpback whales, including up-to-date estimates of M/SI and commends the SAR author(s) for making those revisions in such a timely manner.

Response: We appreciate the Commission's comment. The revision schedule for SARs is sometimes delayed by unforeseen circumstances, and we strive to keep the SARs up-to-date with the most relevant information.

Comment 67: The Makah Tribe comments the draft 2018 SARs for large whales introduce a concept to NMFS' stock assessment process in which entanglements of unidentified large whales are assigned to a specific species utilizing a modeling exercise. As the SARs note, each year approximately 15 percent of large whale entanglement reports cannot be assigned to a species due to limitations such as the observer's knowledge of whale identification, sighting distance, weather conditions, and other factors. Carretta (2018) describes a machine learning approach that assigns entangled whales of unknown species to a species based on the location, timing, and other factors. However, NMFS appears to be taking the information from the entanglement reports at face value, without verifying that an entanglement was actually observed or that there are not multiple reports for the same entangled whale.

While NMFS should be applauded for developing a technique for classifying unknown species of entangled whales that assists in quantifying serious injuries and mortalities, the Makah Tribe is concerned that accepting every entanglement report of an unknown whale without scrutiny risks introducing bias into the use of this new tool. They recommend that NMFS be careful in deciding when to include reports of unknown whales in the injury and mortality report and when to apply the model. Specifically, NMFS should apply a stricter quality control methodology for reports where the species is unknown to ensure that they represent unique events and are not duplicative of other documented cases of serious injury and mortality.

Response: We review all entanglement records for reliability, taking into consideration factors as observers' distance from the whale, the experience of the reporting party, and the narrative associated with the entanglement report. Some entanglement reports are not necessarily verified if the evidence is equivocal. For example, there have been reports of whales described as possibly entangled or playing in nearshore kelp. Gray whales in particular will occur nearshore in kelp beds and a record involving that species with such an equivocal narrative may not be counted as an entanglement. We note that the species proration as applied to unidentified whale entanglements is conservative. This is because unidentified whale entanglement reports are opportunistic in nature and there is a large degree of negative-bias (underreporting) in accounting for all entanglement cases. Additionally, there are many cases of multiple documented whales being entangled in fairly close proximity, so the fact that an unidentified entanglement and known-species entanglement co-occur in the same time period and region does not alone support the notion that they are probably the same animal. Further, we evaluate available information including descriptions and photographs (if available) in an effort to identify re-sighted animals. While it is true that an occasional unidentified whale entanglement may match an identified entanglement case, this is likely only a small minority of cases. Many entanglement cases are followed up with vessels actively searching on the water to relocate whales to attempt gear removal operations. Many of these whales are never relocated, which highlights the low probability of

observing an entangled whale in the first place.

Humpback, Blue and Fin Whales

Comment 68: Point Blue Conservation Science (PBCS) appreciates the inclusion and discussion of the humpback, blue, and fin whale ship strike results from their 2017 paper. They note this is an important step towards realistic treatment of ship strikes and their potential impact on west coast whale populations as compared to relying solely on confirmed strandings. PBCS also applauds the inclusion of methods and results that estimate the proportions of unidentified whale entanglements that likely belong to the various whale species. While both of these sources of information involve modeling with inherent uncertainties, the resulting mortality estimates are certainly more accurate than minimums derived from confirmed strike and entanglement events. Clearly, these better estimates will result in more appropriate management decisions for these species.

Response: We acknowledge the comment and are working to make the data in the SARs more representative of the anthropogenic risks to populations.

Comment 69: PBCS notes in all three SARs (humpback, blue and fin whale), the text states that ''strike mortality was recently estimated . . . in the California Current,'' and clarify their models covered the west coast's U.S. EEZ. This is an important distinction because all three species spend significant time outside this region, meaning that any strike deaths that occur outside the EEZ are not included in our estimates. PBCS points out this is particularly important when considering the implications for blue whales in the context of the Monnahan *et al.* 2015 conclusion that the Eastern North Pacific blue whale population is near carrying capacity and likely experiences little population-level effects from ship strikes.

Response: We appreciate this clarification and inadvertently equated the California Current with the U.S. EEZ in the humpback, blue, and fin whale SAR text. We have updated the text in the relevant SARs that the estimated vessel strikes do not include undetected events outside of the U.S. EEZ, where these stocks spend a considerable portion of the year.

Comment 70: PBCS notes Monnahan *et al.* 2015 is important research in which the authors conclude that Eastern North Pacific blue whales are nearing carrying capacity. In the blue whale SAR, Monnahan *et al.* 2015 plays a key role in explaining the observed population trend of blue whales. However, PBCS notes the analysis was based on: (1) A lower number of strikes than likely occurs, and (2) a faulty historical distribution of strike mortality. First, since the authors are modeling the entire population, it is important that their ship strike estimates represent total strike numbers, not just those that occur in U.S. waters. PBCS' estimates for July–November in U.S. waters only were 18–40 deaths. To approximate total population mortality, these would need to be extrapolated to include mortality in December–June *and* in areas outside the EEZ. The SAR states that Eastern North Pacific blue whales spend ''approximately three quarters of their time outside the U.S. EEZ,'' suggesting population-level ship strikes could be much higher than our EEZ estimates.

Response: We appreciate the attention to this point (see response to Comment 69) and have included text in the final SAR that better considers the risk, given the available data and estimates.

Comment 71: PBCS notes that Monnahan *et al.* 2015 assume that blue whale ship strike deaths are directly proportional to historical global vessel counts. However, they point out that: (1) U.S. west coast vessel numbers were not linearly related to the global fleet size through time, (2) vessel numbers are not directly proportional to distances traveled, (3) vessel sizes have changed significantly over their analysis period, and (4) vessel speeds, increased through time. These factors mean that strike mortality was likely distributed more recently in time than predicted by the Monnahan *et al.* 2015 ship model. Population-level mortality significantly higher than 35 deaths/yr (used as a high limit by Monnahan *et al.* 2015) and distributed differently in time may or may not change the results of their population model. PBCS suggests that given the significance of the analysis to Eastern North Pacific blue whale management, an improved and updated assessment would be very valuable.

Response: In response to this comment we have included text in the final SAR that better considers the risk, given the available data and estimates.

Comment 72: PBCS suggests that in the blue whale report, there should be clearer distinction between where discussion of EEZ mortality is relevant versus population mortality. They think that the comparison made between their higher 40 deaths/6-month estimate and the Monnahan *et al.* 2015 use of 35 deaths/year suggests a false equivalency and should either be clarified or removed. In addition, they note there is some evidence that blue whales may actually have behavioral responses to ships that *elevate* their collision risk (*i.e.,* the equivalent to negative avoidance). PBCS thinks the description of our 40 death/6-month estimate as a ''worst-case estimate'' is inaccurate.

Response: We acknowledge the comment and have revised the text in the final SAR as suggested.

Humpback Whale—California/Oregon/Washington (CA/OR/WA)

Comment 73: CBD–HSUS–WDC comment that the increase in PBR level for the putative CA/OR/WA humpback whale stock is difficult to understand given that the California-Oregon feeding group as defined in this SAR includes nearly all of the Central American distinct population segment, which was estimated to include 411 whales. The MMPA defines the term ''population stock'' or ''stock'' as a ''group of marine mammals of the same species . . . that interbreed when mature.'' Because the Central American DPS does not interbreed, they assert it should be considered a separate stock. The PBR level should be calculated using a minimum abundance estimate for the Central American DPS, not a coast-wide abundance estimate, and a recovery factor for an endangered species with less than 500 animals.

Response: As noted in our response to Comment 4, we are currently in the process of reviewing stock structure under the MMPA for all humpback whales in U.S. waters, following the change in ESA listing for the species in 2016, to determine whether we can align the stocks with the DPSs under the ESA. Thus, we have not yet designated new stocks of humpback whales along the U.S. west coast, despite new information on DPSs that the commenter notes. Once we have completed our review, any changes in stock delineation or MMPA section 117 elements (such as PBR) will be reflected in future stock assessment reports. The noted increase in the PBR for the CA/OR/WA humpback whale stock resulted from a higher estimate of abundance compared with a previous version of the SAR and the continued aggregation of multiple DPSs into one recognized stock.

Comment 74: CBD–HSUS–WDC suggest NMFS provided insignificant justification in the CA/OR/WA humpback whale SAR in switching from using the Darroch model, which was used to estimate abundance in prior stock assessment reports, to the Chao model. In the report, NMFS states that the Chao ''estimate is considered the best of those reported by Calambokidis *et al.* (2017a) because it accounts for individual capture heterogeneity,'' but

that does not explain why NMFS chose it this year and not others when it has been available over the same time period of the Darroch model. The Chao model accounted for individual capture heterogeneity in prior years too, when NMFS instead chose the Darroch model as the best estimate of abundance. Figure 2 in the SARs indicates that data used in both the Darroch and Chao models are from approximately the same time period. CBD–HSUS–WDC request NMFS explain why it was not until this year that it used the model that gives higher abundance estimates, per Calambokidis *et al.* (2017a). This is especially important in order to justify the increase by half in the minimum population estimate (a change from 1,876 animals to 2,784 animals).

Response: The Chao estimate from Calambokidis *et al.* (2017a) as stated, accounts for capture heterogeneity and results in an estimate of approximately 2,400 whales with a CV of 0.03. This is the most precise Chao estimate reported from Calambokidis *et al.* (2017a) and it has a CV closest to the most recent Darroch estimate (Table 3 of Calambokidis *et al.* 2017a). While the Darroch estimates generally have better precision, they do not account for capture heterogeneity, and this was considered in the most recent SAR. Given the nearly-equal CVs for the latest Chao and Darroch estimates (0.03 versus 0.01 respectively), the model with the best ability to account for capture heterogeneity was chosen for the 2018 revision. In the previous SAR, the model with the lowest CV was chosen, while capture heterogeneity was largely ignored. In retrospect, we acknowledge more consideration of the strength of the competing models, especially regarding capture heterogeneity, was warranted. When sufficient data are available from mark-recapture estimates, it is advisable to use models that account for capture heterogeneity and we reevaluated this in the 2018 SAR. We also note that estimates from the Chao model are more similar to independently-derived line transect estimates of approximately 3,000 humpback whales reported by Barlow (2016). The commenter may also note that a Chao model mark-recapture abundance estimate has been used in the SAR for the Eastern North Pacific blue whale since 2013. The use of Chao estimates for both humpback and blue whale stocks is now more logically-consistent.

Comment 75: CBD–HSUS–WDC suggest that the CA/OR/WA humpback whale report should at a minimum discuss what the PBR level might be if the stock were appropriately defined to be consistent with the DPS identified. As an example from elsewhere in the SARs, in the case of the Central North Pacific stock, the stock assessment report says ''Just for information purposes, PBR calculations are completed here for the feeding aggregations.'' It then continues by saying ''If we calculated a PBR for the Southeast Alaska/northern British Columbia feeding aggregation, it would be . . .'' CBD–HSUS–WDC note these hypotheticals are important for stakeholders, including managers, to understand the status and population abundances of humpbacks when appropriate DPSs are used. NMFS has declined to consider public comment on potential management actions that contain calculations of PBR that are not in the stock assessment reports. They maintain this makes it pressing for the stock assessment reports to give as much information as possible prior to a future stock revision.

Response: See response to Comments 4 and 73.

Comment 76: CBD–HSUS–WDC request that NMFS clarify and correct the calculations of humpback whale serious injury and mortality in the sablefish fishery. They suggest the stock assessment report should apportion some humpback whale serious injuries and mortality in unidentified gear to the sablefish fishery, as required by the biological opinion for the fishery. Specifically, the biological opinion requires that ''a portion of unidentified whale and gear entanglements would be counted against these take limits . . . in addition to known humpback whale entanglements in gear of the proposed fishery.'' It also says that data ''used to pro-rate unidentified whale and gear entanglements will be updated each year.'' CBD–HSUS–WDC urge NMFS to include these data and calculations in the stock assessment report.

Response: There is currently no model available for assigning unidentified fishery interactions to specific fisheries. There are ongoing analyses in progress to see if this will be possible; but, thus far, the results have not been promising due to lack of sufficient sample sizes of known-gear cases used for model construction.

Comment 77: CBD–HSUS–WDC points out that the stock assessment report's serious injury and mortality for humpback whales in the sablefish fishery are lower than the five-year average in the NMFS report ''Marine Mammal Mortality in U.S. West Coast Groundfish Fisheries (2002–2016).'' This report says that 4 humpback whales were entangled in sablefish fishery from 2012–2016, but the stock assessment report says that 2.5 were entangled. It is not clear why there is a discrepancy.

Response: We note that the draft humpback whale SAR was prepared months before the release of the cited report, and we have updated the final SAR with the estimates in the cited report.

Comment 78: CBD–HSUS–WDC recommend the CA/OR/WA humpback whale report should address the determination that NMFS made as to whether or not to convene a take reduction team for fisheries that are known to entangle humpback whales along the west coast. The draft report proposes to insert a sentence that discusses stakeholder processes in California, Oregon, and Washington. This does not indicate whether NMFS has evaluated the CA/OR/WA stock of humpback whales since 2015, when it was a lower priority compared to other marine mammal stocks and fisheries for establishing take reduction teams. NMFS should identify in the report when it most recently evaluated whether CA/OR/WA humpback whales were the highest priority for a take reduction team. This would address the Pacific SRG's recommendation that NMFS convene a TRT. Relying on an evaluation in 2015 ignores both the listing of the DPSs and the impact of most of the recent entanglements.

Response: SARs by definition include the best available science for assessing marine mammal stocks. Deciding whether to convene a TRT is a management determination that is outside the scope of a stock assessment and is therefore not included in a SAR.

Comment 79: The Makah Tribe comments that CA/OR/WA humpback whale stock does not represent a stock of humpback whales under the definition of a stock under the MMPA; the listing of humpback whales together from CA/OR/WA is for management purposes and is best characterized as a mixed-stock assemblage. The SAR should provide PBR estimates for each stock (Mexico DPS, Central America DPS, and Hawaii DPS) that occur in the management area. The SAR could also report a separate PBR for the two feeding groups within the management area (Washington-Southern British Columbia and Oregon-California) in order to better inform management decisions and assess localized impacts. The Makah Tribe notes these changes would allow a more thorough evaluation of how human impacts affect humpback whale stocks. If photo-identification allows separation of a whale to one or another stock, then that data should be used. If photo-identification is not available, then the

mortality or serious injury should be proportionally assigned to the stocks based on the occurrence of those stocks within the feeding area.

Response: See response to Comments 4 and 73.

Comment 80: The Makah Tribe recommends the calculation for PBR needs to be changed for the CA/OR/WA stock of humpback whales. The PBR calculation used has 8 percent for Rmax. NMFS scientists published a paper in 2010 using life history tables to evaluate what the maximum rate of increase is for humpback whales. They concluded, ''It is proposed that the upper 99 percent quantile of the resulting distribution of the rate of increase (ROI) for Approach B (11.8 percent/year) be established as the maximum plausible ROI for humpback whales and be used in population assessment of the species.'' (Zerbini *et al.* 2010). It is unclear why NMFS has chosen to use 8 percent, which is rate that population has increased at, rather than using the Rmax for the population as is required in the PBR calculation. The observed rate of increase of 8 percent may be less than the true Rmax of the population because the population size was greater than abundance at which Rmax occurs.

Response: We agree with the comment that the observed ROI may be lower than the theoretical Rmax for this population. However, Zerbini *et al.* (2010) note that ''we emphasize that such a high figure can be observed only with extreme and very optimistic lifehistory parameters.'' The estimated Rmax reported by Zerbini *et al.* (2010) also includes life history data from other ocean basins where reported rates of increase were much higher, for example southern hemisphere populations that were recovering from intense whaling. The GAMMS (NMFS 2016) also states that ''Default values should be used for Rmax in the absence of stock-specific measured values.'' There is a stock-specific estimate of Rmax based on mark-recapture abundance estimates from a recovering population of humpback whales in the California Current and that estimate is 8 percent as outlined in the SAR. While we acknowledge that this area likely includes multiple stocks of humpback whales, 8 percent is currently the best estimate of humpback whale Rmax for this ocean region.

Comment 81: The Makah Tribe recommends NMFS reconsider the assumption about what proportion of time the CA/OR/WA humpback whale stock spends in U.S. waters. NMFS has assumed that whales of the CA/OR/WA stock only spend 50 percent of the year in U.S. waters without any justification. The Makah Tribe thinks the estimate should be increased for two reasons. First, many of the whales of the CA/OR/WA stock winter in Hawaii and thus only leave U.S. waters during the short period of the year when they are migrating between wintering and feeding grounds. Second, in Washington, humpback whales feed from late April through December, roughly 8 months. Some of the whales even appear to spend the entire winter in Washington rather than migrating to wintering grounds. They suggest the proportion of time spent in U.S. waters would be easiest to address using the assumption above of reporting separate PBRs for each of the stocks within the mixed-stock management area.

Response: The comment incorrectly implies that many of the humpback whales that feed off of the U.S. west coast winter in Hawaii. The 2018 SAR states: ''Along the U.S. west coast, NMFS currently recognizes one humpback whale stock that includes two separate feeding groups: (1) A California and Oregon feeding group of whales that belong to the Central American and Mexican distinct population segments (DPSs) defined under the ESA (NOAA 2016a), and (2) *a northern Washington and southern British Columbia feeding group that primarily includes whales from the Mexican DPS but also includes a small number of whales from the Hawaii* and Central American DPSs (Calambokidis *et al.* 2008, Barlow *et al.* 2011, Wade *et al.* 2016).'' NMFS agrees that further work is needed to refine estimates of time spent in U.S. waters by the various DPSs that utilize the California Current.

Humpback Whales—Mexican DPS and Central American DPS

Comment 82: Oceana notes the best available information on entanglement, injury, and mortality of humpbacks off the U.S. west coast indicates that risks to the stock from entanglement in fishing gear have significantly increased and comment that recent information was not considered in the stock assessment report.

Response: The CA/OR/WA humpback whale SAR states in the Fishery Information section that ''Pot and trap fisheries fishery entanglements are the most commonly documented source of serious injury and mortality of humpback whales in U.S. west coast waters (Carretta *et al.* 2013, 2015, 2016a, 2018a), and entanglement reports have increased considerably since 2014.''

Comment 83: Oceana suggests that as humpback whales in the U.S. west coast stock, a strategic stock under the MMPA due to its ESA listing, were recently split into two DPSs, it is imperative that the SARs assign serious injuries and mortalities to each DPS, and establish PBR levels accordingly. Oceana is concerned that aggregating the much more critically endangered Central American DPS along with a much more numerous Mexico DPS into a single PBR may obscure and underestimate impacts to the Central American DPS.

Response: See response to Comments 4 and 73.

Comment 84: Oceana expresses concern that NMFS is not taking sufficient action for the CA/OR/WA humpback whale stock to reduce whale entanglement levels to below PBR and ultimately to levels approaching zero. While they understand NMFS' approach has been to rely on state working groups to develop programs like California's Risk Assessment and Mitigation Program, to date, NMFS has not indicated to the state of California or the Dungeness Crab Fishing Gear Working Group what actions and outcomes are necessary to permit the fishery to operate under the MMPA or ESA.

Response: The States of California, Oregon, and Washington have indicated an intention to apply for an ESA section 10(a)(1)(B) Incidental Take Permit (ITP) for their fisheries that entangle protected species. We will be working closely with those states on the development of their applications and associated Conservation Plans for that permitting process. A successful application for an ESA ITP requires that the applicant minimize the impact of their incidental take to the maximum extent practicable (among other requirements) and NMFS must make both a ''not likely to jeopardize'' finding under the ESA and a ''negligible impact'' finding under the MMPA in order to issue such permits. As a result, we expect that the development process for both permits would include discussions of the actions and outcomes necessary to permit the incidental take from the actions under the ESA and MMPA.

Comment 85: Oceana also notes that humpback whale entanglement data from NMFS indicates higher levels of entanglements in 2017 (31 confirmed) and 2018 (27 confirmed) than in 2012 and 2013, and suggest the 5-year average level of M/SI would be higher if the SAR used the most recent 5-year period. In addition, the estimates of human-caused M/SI for all whales do not account for unreported entanglements, which could result in a serious underestimation of total M/SI and the associated determination whether M/SI is above or below PBR. NMFS has scientifically reliable means of

estimating potential total entanglement numbers. According to NMFS Tech Memo (Saez *et al.* 2013), the authors applied a 10 percent reporting rate for all whale species on the U.S. west coast to produce an estimate that ''an average of 103 whale entanglements per year may be occurring, with 93 unobserved and undocumented with their ultimate fates unknown.'' This is based on a study where ''The number of reported entangled whales was estimated to be only 10 percent of the actual number of whales entangled (Robbins and Mattila, 2004).'' However, in the SAR, the estimates of total fishing-induced M/SI only include reported entanglements for which M/SI was determined.

Response: We note the SARs utilize the most recent 5-years of data that have been analyzed and vetted when preparing the draft reports. We will include newer data in the appropriate future reports. Values for entanglement reporting rates cited (Saez *et al.* 2013) are taken from U.S. east coast studies and are not representative of U.S. west coast data. There currently are no estimates of the total number of undetected entanglements in this region.

Comment 86: Oceana comments the SAR estimates of whale entanglement are based on an incorrect assumption that zero M/SI events occur from entanglements that are not reported. They note NMFS acknowledges that the number of unreported entanglement events—and thus the number of M/SI events—is well above zero and has estimated that the actual number of entanglements is ten times the observed number. Oceana stresses the importance of incorporating some estimate of unobserved M/SI numbers for understanding the true level of risk to each stock. They request that NMFS provide an estimate of the reporting rate for whale entanglements, particularly for humpback, blue, fin, and gray whales and use the estimate to provide a total annual fishing mortality for these whales to reflect the best available science.

Response: See response to Comment 85.

Comment 87: Oceana requests NMFS take appropriate actions to reduce whale entanglements and ship strikes, as each of these human-threats is individually exceeding PBR, and the cumulative mortality is over double PBR.

Response: See response to Comment 84. We acknowledge the comment and note it is outside the scope of the SARs, but we are actively working on this topic with our partners, such as state agencies and marine shipping companies to reduce the ship strike risk in U.S. waters (see our web page at *https://www.fisheries.noaa.gov/insight/understanding-vessel-strikes* on the subject).

Fin Whale—CA/OR/WA

Comment 88: CBD–HSUS–WDC suggest the report for CA/OR/WA fin whales should be updated to reflect the 2015 interaction with the Hawaii shallow-set longline in the northeastern fishing area (namely, closer to the west coast EEZ) and specify whether this vessel was Hawaii or California-based.

Response: There are no estimates of fin whale abundance on the high seas outside of the Hawaii or U.S. west coast EEZs; thus, PBR and human-caused mortality is assessed for those records that occur within the U.S. EEZ. The GAMMS (NMFS 2016) note that ''If estimates of mortality or abundance from outside the U.S. EEZ cannot be determined, PBR calculations should be based on abundance within the EEZ and compared to mortality within the EEZ.'' The 2015 entanglement was determined to be a non-serious injury (Bradford 2018) and because it occurred outside the U.S. EEZ, it is not included in the stock assessment report for the CA/OR/WA stock of fin whales. The stock of fin whales for which this entanglement should be assigned to is unknown; but, based on the location, we have updated the text in the final 2018 CA/OR/WA fin whale SAR to better inform the reader of potential fishery risks to this particular stock.

Comment 89: CBD–HSUS–WDC comment that the Pacific SARs do not regularly include appendices with relevant and timely fisheries information. They note updated information on interactions in longline fisheries is important especially as the number of longline vessels has increased drastically since 2008 in California. Eighteen Hawaii-permitted vessels landed swordfish and tuna in California in 2016. Stakeholders, including federal fisheries managers, need the stock assessment reports to accurately represent marine mammal interactions occurring in the Hawaii longline fisheries in order to assess the risk to marine mammals in the California Current. Further, it is not easy to find information on interactions with the California-based shallow-set longline fishery in the Pacific or Alaska SARs and suggest the interaction rates of the California-based shallow-set longline fishery should be included in the appendices, if not directly in the SARs.

Response: We produce summaries of marine mammal interactions in the longline fisheries in the Pacific region (*e.g.,* Bradford 2018). Updating the fishery description appendices sometimes takes a lower priority in the SAR preparation process due to the increasing workload involved in SAR preparation. We will strive to produce more timely updates to these fishery description sections in future SARs.

Risso's Dolphin—CA/OR/WA

Comment 90: CBD–HSUS–WDC encourage NMFS to investigate Risso's dolphin interactions in the California market squid fishery via electronic monitoring (video). They reference a video of a purse seine encircling marine mammals in Monterey Bay was published on YouTube on April 25, 2018, and suggest this type of interaction, which may not occur with observers on board and may not be self-reported, could be captured via electronic monitoring. CBD–HSUS–WDC suggest NMFS acknowledge in the stock assessment reports that interactions in this fishery do currently occur.

Response: This particular SAR was not revised in 2018, and we take note that interactions with this purse seine fishery should be updated the next time the SAR is revised. Past interactions with the squid purse seine fishery are detailed in the last revision of this SAR.

Killer Whale—Eastern North Pacific Southern Resident

Comment 91: CBD–HSUS–WDC comment that although some updates were included on basic information about killer whale populations in the Eastern North Pacific, additional changes should be made to update terminology, distribution, and stock differentiation information in the southern resident killer whale (SRKW) report. They note that the tracked changes made in the introduction to the Eastern North Pacific Offshore killer whale SAR align with their requested changes for the SRKW SAR introduction, particularly the clarification of different types of killer whales as ''ecotypes'' instead of ''pods'' and updated genetic differentiation. For more recent background information and consistency among SARs, CBD–HSUS–WDC suggest that NMFS apply the same updates to the SRKW SAR. In addition, they suggest that NMFS update terminology referring to the three pods in the SRKW population from J1, K1, and L1 to J, K, and L, as the alphanumeric designations refer to individuals, not pods.

Response: We acknowledge the comment and have made the suggested changes in the final 2018 SRKW report.

Comment 92: CBD–HSUS–WDC comment while NMFS includes some updated information on the distribution of SRKWs outside the inland waters of Washington state and southern British Columbia (the Salish Sea), they disagree with the SAR's statement that the coastal habitat of SRKWs is still uncertain, when more recent recovery documents and status updates thoroughly describe how this population uses coastal habitat. They suggest NMFS use updated research from multiple tagging studies, passive acoustic recording, and monitoring from vessel cruises to update the the use of coastal habitat in the SRKW SAR. In addition, they comment that recent research published by Canada's Department of Fisheries and Oceans establishes SRKW presence off southern Vancouver Island, which resulted in expanded critical habitat in Canadian waters. They suggest this information should also be included in the SAR and used to update the information about coastal habitat use in Canada by the SRKWs.

Response: The SAR states ''The complete winter range of this stock is uncertain.'' While there has been substantial new information acquired in recent years on the occurrence of this population in coastal waters, the complete winter range of the population is still unknown. The SAR describes what is known of the range in the Stock Definition and Geographic Range section and the range map provides readers with information on the known range of the stock.

Comment 93: CBD–HSUS–WDC comment that the Center for Whale Research conducts the annual census for the SRKWs and typically provides updates on July 1st and December 31st of each year. They suggest this allows enough time for NMFS to reflect a more recent census report in the SRKW report using numbers reported on July 1st in the same year as the SAR. Using census numbers from July 1, 2017, reflects population abundance more than a year and a half out of date, which is unnecessary for a population as small and as closely monitored as the SRKWs. As of July 1, 2018, the SRKW population consisted of 75 individuals.

Response: The Center for Whale Research is under contract to NMFS and provides a population estimate on July 1st of each year. Since the beginning of the Center for Whale Research's study in 1976, July 1st was used as the date for the population estimate. Although additional effort in the fall months in recent years has occasionally allowed for a population estimate of December 31st, for some years sighting data of all three pods may not exist for most or all of the fall months. For the sake of consistency, we will continue to use the census data from July 1st. We do provide an update to the SRG at their annual meeting of any changes (births/deaths) since the SAR was filed.

Comment 94: CBD–HSUS–WDC recommend NMFS add a description in the SRKW report of the ''current population trend, including a description of the information upon which [it is] based,'' as required by the MMPA. The SAR describes the past trends and provides the 2017 number of animals (77) but does not specify the current trend. The population of SRKW has now dropped to 74 animals, its lowest point in 34 years, and it is continuing to decline. In 2014, a population viability study estimated that under status quo conditions, the SRKW growth rate was a 0.91 percent annual decline, meaning it would reach an expected population size of 75 in one generation (or by 2036). This abundance was reached in mid-2018. Its current growth rate is just half of the previous estimate described by a 2012 international panel review.

Response: The SAR states: ''Following the peak census count of 99 animals in 1995, the population size has declined and currently stands at 77 animals as of the 2017 census.'' This is the lowest number since 1995 and is based on data from the annual census, and is considered a declining trend. The inclusion of the 2018 census data, 74, does not change this trend. The SAR language as stated is sufficient to describe the current trend.

Comment 95: CBD–HSUS–WDC comment that growth rates and productivity in different Resident killer whale populations may be affected by variability in diet, environmental conditions, and habitat range. These different environmental conditions, including prey availability, pollution, and disturbance levels may impact their resulting annual growth rate. To better reflect the habitat conditions of SRKWs and the resulting maximum net productivity, CBD–HSUS–WDC suggest that NMFS use the same growth rates and estimated net productivity rates as are used for Northern Resident killer whales. They suggest this population is closer to SRKWs in prey availability and environmental conditions, and shares a similar history in exploitation for captive display. If NMFS does not make the change to maximum net productivity rate, we request that NMFS update the estimate for PBR to reflect the update to population size. With a population of 77 individuals and a calculated PBR of 0.13, NMFS should also update the estimate of ''1 animal every 7 years'' to ''1 animal every 8 years.''

Response: We will evaluate other maximum rates of increase for killer whale populations and consult with the Pacific SRG regarding potential changes to the SAR moving forward. We will retain the currently-used Rmax value from the published study of Matkin *et al.* (2014) in the final 2018 SAR. The retention of the current Rmax value results in no appreciable difference in the calculated PBR compared with the Rmax value proposed by the commenter.

Comment 96: CBD–HSUS–WDC comment in the ''Human-caused mortality and serious injury'' secion of the SRKW SAR, NMFS notes a lack of fishery-related stranding information for killer whales in Canadian waters. However, a 2014 report of a juvenile Northern Resident killer whale (I103) being entangled in a gillnet is documented and included in Canada's updated Recovery Strategy for killer whales. Although the whale was quickly released from the net, he/she died the following winter. Given the biological similarities between Northern Resident killer whales and SRKWs, including a preference for Chinook salmon, a similar risk of interaction exists and CBD–HSUS–WDC recommends this example of a potential occurrence should be noted in the SAR.

Response: We have added this information to the final 2018 SAR.

Comment 97: CBD–HSUS–WDC disagree with NMFS that the total non-fishery human-caused mortality for the SRKW stock for the past five years (2012–2016 or 2013–2017) is zero. NMFS notes in this SAR the death of a young adult male, L95, from a fungal infection introduced by a satellite tag. While the infection was determined to be the cause of death for L95, they argue that human activity exacerbated this infection and contributed to the introduction of the fungus into L95's bloodstream, hastening his death. Additionally, CBD–HSUS–WDC recommend the death of J34, from blunt force trauma, should be included as another human-caused mortality and attributed as vessel strike mortality. For a population in a highly vulnerable state, deaths with a high likelihood of being caused by human activity should be noted as such.

Response: We acknowledge the uncertainty of such cases in the ''Other Mortality'' section of the SAR and include past documentation of a vessel strike death of a southern resident killer whale from 2006. We have added language to the SAR that acknowledges

that undetected or unclassified human-related mortality and injury may occur in the population.

Comment 98: CBD–HSUS–WDC notes that the ''Habitat Issues'' section in the SARs is intended by the MMPA to cover ''other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey.'' Thus, they request that NMFS reflect the level of research that has established the preference for Chinook salmon of SRKWs and remove the phrase ''appears to be'' in noting that SRKWs are Chinook salmon specialists. They also disagree with the inclusion of pink salmon in the list of other species in their diet, as the paper cited (Ford *et al.* 2016) finds that pink salmon are present in proportions of less than 0.01 in fecal samples from SRKWs. Additionally, CBD–HSUS–WDC recommend that NMFS elaborate on its note that ''changes in Chinook abundance have affected this population,'' to include updated information on the impact of human activity (*e.g.,* harvest, vessel disturbance, and habitat modification) on the availability of SRKW prey as well as the significant impact prey abundance has on SRKW body condition, nutritional stress, fecundity, and survival.

Response: We have elaborated on the published links between lower Chinook salmon availability and lower population fecundity of southern resident killer whales in the final SAR.

Comment 99: CBD–HSUS–WDC comment that with respect to harvest impacts, NMFS has acknowledged elsewhere that the harvest of salmon (in particular Chinook) can result in harm to SRKWs by ''reducing prey availability, which may cause animals to forage for longer periods, travel to alternate locations, or abandon foraging efforts.'' Ocean and inland fisheries harvest fish from priority stocks of Chinook salmon that the orcas target. Scientists have estimated that ocean fisheries alone reduce Chinook abundance by 18–25 percent. This is significant to the Southern Residents, as shown by Lacy *et al.* (2017), which projected that a ''50 percent noise reduction plus a 15 percent increase in Chinook would allow the population to reach the 2.3 percent growth target'' needed for recovery. They suggest that NMFS include updated information on toxic contamination and potential impacts in this section.

Response: See response to Comment 98 regarding Chinook prey availability. With regard to contaminants, we are analyzing data collected via biopsy samples, which will add to the body of knowledge on contaminants published by Krahn *et al.* (2007, 2009) which is currently cited in the SAR.

Gray Whale—Eastern North Pacific

Comment 100: The Makah Tribe comments that the ''Stock Definition and Geographic Range'' section of the Eastern North Pacific (ENP) gray whale SAR should be updated to improve accuracy and clarity and to reflect current, best available science, particularly in the discussion about the Pacific Coast Feeding Group (PCFG). They recommend the SAR be changed to reflect the PCFG abundance estimate is ''approximately 240,'' as indicated in the Population Size and Minimum Population Estimate sections, rather than the outdated estimate from Calambokidis *et al.* (2014).

Response: We have updated the ''Stock Definition and Geographic Range'' section in the final SAR to omit the reference to the number of whales in the PCFG. Abundance estimates are addressed in the ''Population Size'' section and are limited to those animals within the IWC-defined region detailed in the SAR.

Comment 101: The Makah Tribe comments NMFS should not use a lower recovery factor for PCFG gray whales but should use the same recovery factor of 1.0 as used for ENP whales. They state the best available science, as developed by the IWC's range-wide review over an intensive five-year evaluation of stock structure hypotheses for all north Pacific gray whales, indicates that the PCFG is not separate from the ENP stock, and the recovery factor for PCFG whales should be 1.0 because they are ENP gray whales. Even if NMFS disagrees that PBR for the PCFG should be calculated based on a recovery factor of 1.0, the Makah Tribe suggests the recovery factor should at least be increased to 0.75 to reflect the continuing population growth of the PCFG as reflected in the most recent abundance estimate through 2015 (Calambokidis *et al.* 2017b). The Makah Tribe reiterates their comments on the 2014 draft SAR for ENP gray whales for increasing the recovery factor of the PCFG above the default value for stocks of unknown status due to a stable abundance trend and the already conservative effect of calculating PBR for a feeding aggregation.

Response: We have the flexibility to set recovery factors that reflect considerations other than population trends. The GAMMS state that ''Recovery factors of 1.0 for stocks of unknown status should be reserved for cases where there is assurance that Nmin, Rmax, and the estimates of mortality and serious injury are unbiased and where the stock structure is unequivocal. '' (NMFS 2016). This PCFG is small in size and the estimated M/SI is based on minimum counts of observed cases. Thus, the M/SI is not unbiased, it is negatively-biased. This, in combination with the small size of the feeding group, warrants a smaller recovery factor until that time the population dynamics of the PCFG can unequivocably be determined. A goal of the MMPA is to maintain populations as functioning elements of their ecosystem, thus use of a more conservative recovery factor is consistent with a small feeding group that has a restricted geographic range.

Comment 102: The Makah Tribe suggests that the ''Human-Caused Mortalities and Serious Injury'' section of the ENP gray whale report, the PCFG mortalities and serious injuries should be added to the total for mortalities and serious injuries of the ENP stock to accurately report the total number of human-caused mortalities of the ENP gray whale stock. Currently, mortalities and serious injuries are treated as mortality to two separate stocks, although the SAR states that NMFS does not consider the PCFG a stock, but is included as a part of the ENP.

Response: We have revised the ''Human-Caused Mortalities and Serious Injury'' section of the ENP gray whale report to clarify that such estimates of anthropogenic impacts for PCFG whales are a component of the estimates for the overall ENP stock.

Comment 103: The Makah Tribe suggests that the section on ''Subsistence/Native Harvest Information'' be updated to reflect the IWC's approval of a new gray whale catch limit covering the period 2019 through 2025 at the 2018 biennial meeting. The new catch limit of up to 140 strikes annually is an overall increase; and, while it does not affect the number of whales potentially available to the Makah Tribe if its waiver request is approved, the important changes in the gray whale catch limit should be included in the new SAR. The Makah Tribe has concerns about the last sentence of this section, which reports on the total number of gray whales harvested in aboriginal subsistence hunts over a 32-year period from 1985 to 2016. They point out the SAR already includes values from aboriginal harvests for the relevant five-year period 2012–2016 and does not need the value reported from the longer period. The sentence should be removed because it serves no function in the SAR. If NMFS decides to retain the sentence, they suggest

appropriate context should be added, including the abundance trend of ENP gray whales over the same time, the current abundance estimate for the stock, and representative PBR values over the period, which demonstrate that the average annual removals are a fraction of the calculated PBR and are thus sustainable.

Response: We have updated the aboriginal subsistence quota in the final SAR based on the 2018 IWC meeting. We disagree that historical subsistence takes of gray whales reported in the SAR are unnecessary to report. They serve to inform the public of the history of takes in recent decades, and the values implicitly support the assertion that aboriginal takes have been sustainable, in light of the population trend data shared in the SAR. We have added a sentence to this section noting that the size of the ENP population has grown during this same period.

Gray Whale—Western North Pacific

Comment 104: The Makah Tribe comments the title for the Western North Pacific (WNP) gray whale SAR should be changed. The term ''Western North Pacific'' gray whale was previously used by NMFS for the continued listing under the ESA of an isolated gray whale population that both feeds and winters off the coast of Asia. The fact that a substantial percentage of the whales described in the ''Western North Pacific'' SAR migrate through U.S. waters, and not along the coast of Asia to wintering grounds off of Asia, shows that the whales represented in the SAR are a different group of whales than the isolated population previously considered to be ''Western North Pacific'' gray whales. The SAR makes it clear that the Sakhalin Island feeding area is made up of a mixed stock aggregation of whales that migrate to wintering grounds off Asia and whales that migrate through U.S. waters to wintering grounds off North America. The Makah tribe suggests that because only the former population represents the historic ''Western North Pacific'' stock, the title of the SAR should be changed to ''Western Feeding Group Gray Whales'' to reflect that the latter group of whales analyzed, *i.e.,* those that migrate to U.S. waters and thus must be evaluated in a SAR under the MMPA, are members of a feeding group of eastern breeding animals but are unlikely to be the whales that historically existed only in Asian waters and which remain listed as endangered under the ESA.

Response: We responded to a similar comment on the 2014 version of this report (see 80 FR 20502, August 20, 2015). The current SAR notes that whales seen near Sakhalin may include a mixture of ENP animals feeding in this region, in addition to WNP whales. There is no evidence to indicate that the WNP stock of gray whales is extinct, as implied by the commenter (see Comment 105). Evidence continues to support an extant WNP population as reported in Brüniche-Olsen *et al.* 2018.

Comment 105: The Makah Tribe comments the WNP gray whale SAR should include a description of Cooke (2015), which provided a quantitative estimate of the percentage of whales that feed off Sakhalin Island and migrate to wintering grounds off North America. The results of Cooke's analysis—that whales representing 37 to 100 percent of Sakhalin feeding whales could be migrating to North America—is essential to the context for this SAR. That a high percentage of—and possibly all—Sakhalin whales may in fact migrate to North America rather than solely along the Asian coast raises significant questions about the identity of those whales migrating east rather than south, the potential that the historic ''Western North Pacific'' stock is extinct, and the stock status and ESA-listing status of the Sakhalin whales that do migrate to North America as separate from the historic ''Western North Pacific'' stock. Citation to Cooke (2015) is also appropriate because the SAR identifies the proportion of the stock that uses U.S. EEZ waters in the Potential Biological Removal section. Cooke (2015) is clearly relevant to that determination and should be discussed.

Response: The Cooke (2015) paper is discussed in this context in the ''Stock Definition and Geographic Range'' section of the SAR.

Comment 106: The Makah Tribe comments the IWC's range-wide review represents the most recent and best available scientific information on questions of gray whale stock structure. While the SAR mentions the five-year review process, it would be much more informative if it were to discuss the stock structure hypotheses currently considered by the IWC to be most plausible for gray whales. It is notable that in the two hypotheses considered most plausible by the IWC (3a and 5a), the whales migrating to North American wintering grounds from feeding grounds in the Okhotsk Sea are considered the Western Feeding Group of the ENP gray whale stock. In only one hypothesis (6b), which was considered to have lower plausibility by the IWC, would whales from the Sakhalin Island feeding area include Western Breeding Stock (*i.e.,* the historic ''Western North Pacific'' stock) animals that utilize wintering grounds in North America without fidelity to wintering grounds in either North America or Asia. The Makah Tribe suggests adding a detailed discussion and analysis of the IWC range-wide workshop's stock structure hypotheses.

Response: We have added text to the final SAR to reflect the two most plausible hypotheses put forward by the IWC. It is important to note that these represent hypotheses, which do not equate to best available science used in a SAR. Genetic studies of gray whales in the North Pacific provide the best available science for the conclusion that the Western North Pacific population of gray whales is extant, though likely very small.

Comment 107: The Makah Tribe recommends the WNP gray whale SAR should more accurately reflect the conclusion of Cooke *et al.* (2017) regarding whether the combined Sakhalin-Kamchatka feeding aggregation is a closed population.

Response: We have updated the final SAR with text taken directly from Cooke *et al.* (2017) that better addresses the uncertainty and conclusions: ''We conclude that the Sakhalin feeding aggregation is probably not genetically closed but that the Sakhalin and Kamchatka feeding aggregations, taken together, may be genetically closed. However, genetic data from Kamchatka would be required to confirm this.''

Harbor Seal—California

Comment 108: One commenter pointed out that the California harbor seal SAR was not updated in 2018 though well overdue.

Response: This comment deals with a SAR that was not revised in 2018. The most recent abundance estimate for this stock is based on data collected in 2012, and the SAR was revised in 2014. No new information on the population size of this stock is currently available that warrants a revision of the report.

False Killer Whale—Hawaiian Stocks

Comment 109: The Hawaii Longline Association notes that NMFS has proposed no revisions to the 2018 SAR for the Hawaii false killer whale stocks and asks NMFS to provide an explanation in its responses to comments.

Response: We reviewed available data for all three Hawaii false killer whale stocks, and there was no new information that would change the status of any of the three stocks discussed within the SAR. Therefore, we did not update the False killer whale Hawaiian Islands Stock Complex SAR in 2018.

Dated: June 13, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–12909 Filed 6–18–19; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Revise Collection Numbers 3038–0087, Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before July 19, 2019.

ADDRESSES: You may submit comments, identified by ''Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants,'' and Collection Number 3038–0087 by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *http://RegInfo.gov.*

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Gregory Scopino, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5175; email: *gscopino@cftc.gov.*

SUPPLEMENTARY INFORMATION: This notice solicits comments on the collections of information mandated by Commission regulations 23.201 through 23.205 (Reporting, Recordkeeping, and Daily Trading Records Requirements For Swap Dealers and Major Swap Participants).

Title: Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants (OMB Control Nos. 3038–0087). This is a request for an extension of currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Commission regulations 23.201 through 23.205 (Reporting, Recordkeeping, and Daily Trading Records Requirements For Swap Dealers and Major Swap Participants)[2] pursuant to sections 4s(f)[3] and 4s(g)[4] of the Commodity Exchange Act (''CEA'').[5] Commission regulations 23.201 through 23.205 require, among other things, swap dealers (''SD'')[6] and major swap participants (''MSP'')[7] to maintain transaction and position records of their swaps (including daily trading records) and to maintain specified business records (including records related to the governance and financial status of the swap dealer or major swap participant, complaints received by such SD or MSP and such SD or MSP's marketing and sales materials). They also require SDs and MSPs to report certain swap transaction data to swap data repositories, to satisfy certain real time public reporting requirements, and to maintain records of information reported to swap data depositories and for real time reporting purposes.[8] The Commission believes that the information collection obligations imposed by Commission regulations 23.201 through 23.205 are necessary to implement sections 4s(f) and 4s(g) of the CEA, including ensuring that each SD and MSP maintains the required records of their business activities and an audit trail sufficient to conduct comprehensive and accurate trade reconstruction. On April 12, 2019, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 84 FR 14921 (''60-Day Notice''). The Commission did not receive any comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and estimated burden hours. The respondent burden for this collection is estimated to be as follows:

Number of Registrants: 103.

Estimated Average Burden Hours per Registrant: 2,096.

Estimated Aggregate Burden Hours: 215,888.

Frequency of Recordkeeping: As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 13, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–12941 Filed 6–18–19; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] 17 CFR 23.201–23.205.

[3] 7 U.S.C. 6s(f).

[4] 7 U.S.C. 6s(g).

[5] 77 FR 20128.

[6] For the definition of SD, see section 1a(49) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(49) and 17 CFR 1.3.

[7] For the definitions of MSP, see section 1a(33) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(33) and 17 CFR 1.3.

[8] See 17 CFR 23.201–23.205.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Revise Collection 3038–0089, Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before July 19, 2019.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs in OMB, within 30 days of publication of the notice, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0089. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0089, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW, Washington, DC 20503, and to the Commission through its website at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the website.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, or by Hand Delivery/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://regInfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Meghan Tente, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, (202) 418–5785, email: *mtente@cftc.gov,* and refer to OMB Control No. 3038–0089.

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on April 12, 2019 (84 FR 14922).

Title: Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps (OMB Control No. 3038–0089). This is a request for extension of a currently approved information collection.

Abstract: The collection of information is needed to ensure that the CFTC and other regulators have access to data regarding pre-enactment and transition swaps, as required by the Commodity Exchange Act as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The Dodd-Frank Act directed the CFTC to adopt rules providing for the reporting of data relating to swaps entered into before the date of enactment of the Dodd-Frank Act, the terms of which had not expired as of the date of enactment of the Dodd-Frank Act (''pre-enactment swaps'') and data relating to swaps entered into on or after the date of enactment of the Dodd-Frank Act and prior to the compliance date specified in the the CFTC's final swap data reporting rules (''transition swaps''). On June 12, 2012, the CFTC adopted regulation 46, which imposes recordkeeping and reporting requirements relating to pre-enactment and historical swaps.

Burden Statement: Provisions of CFTC Regulations 46.2, 46.3, 46.4, 46.8, 46.10, and 46.11 result in information collection requirements within the meaning of the PRA. With respect to the ongoing reporting and recordkeeping burdens associated with pre-enactment and transition swaps, the CFTC believes that SDs, MSPs, and non-SD/MSP counterparties incur an annual time-burden of 17,328 hours. This time-burden represents a proportion of the burden responents incur to operate and maintain their swap data recordkeeping and reporting systems.

17 CFR 45 imposes swap recordkeeping and reporting requirements on respondents related to swaps that are not pre-enactment or transition swaps. The CFTC believes that respondents use the same recordkeeping and reporting systems to compy with both parts 45 and 46. The CFTC has computed the estimated burden for 17 CFR 46 by estimating the burden incurred by respondents to operate and maintain their swap data recordkeeping and reporting systems and then estimating the percentage of that burden associated with pre-enactment and transition swaps. Since the enactment of 17 CFR 45, the vast majority of pre-enactment and transition swaps have been terminated by the parties to the swaps or are otherwise no longer in existence. As 17 CFR 46 only requires respondents to make ongoing reports regarding pre-enactment and transition swaps that continue to be in existence, the number of reports being made pursuant to 17 CFR 46 has declined significantly over time. As the volume of reports made pursuant to 17 CFR 46 is estimated to be very small releative to the estimated volume of reports made pursuant to 17 CFR 45, the Commission's burden estimate has allocated the vast majority of the estimated burden to operate and maintain respondents' swap data recordkeeping and reporting systems to the burden estimate associated with 17 CFR 45.

Respondents/Affected Entities: Swap Dealers, Major Swap Participants, and other counterparties to a swap transaction (*i.e.,* end-user, non-SD/non-MSP counterparties).

Estimated Number of Respondents: 30,125.

Estimated Total Annual Burden on Respondents: 17,328 hours.

Frequency of Collection: Ongoing.

[1] 17 CFR 145.9.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 13, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–12923 Filed 6–18–19; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for the Grantee Progress Report (GPR) Data Collection.; Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Grantee Progress Report (GPR) Data Collection for review and approval in accordance with the Paperwork Reduction Act.

DATES: Comments may be submitted, identified by the title of the information collection activity, by July 19, 2019.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Sarah Yue, at 202–606–6894 or by email to *syue@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may use our web chat for alternative communication *www.NationalService.gov/contact-us.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on 2/26/2019 at Vol. 84, No. 38, p. 6136–6137. This comment period ended 4/29/2019. Two (2) public comments were received from this Notice. In response to the first comment, CNCS changed ''100%'' to ''the level required by policy'' per the commentor's suggestion. In response to the second comment, CNCS will explore potential future revisions to the member exit form or exit survey to accommodate additional member-focused indicators.

Title of Collection: Grantee Progress Report (GPR) Data Collection.

OMB Control Number: 3045–0175.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and Organizations; State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 300 total respondents for AmeriCorps State and National. 52 respondents each for Commission Support Grants and Commission Investment Funds. 20 respondents for Volunteer Generation Fund.

Total Estimated Number of Annual Burden Hours: 4,540.

Abstract: CNCS uses information collected via the Grantee Progress Reports to assess grantee progress toward meeting approved objectives; to identify areas of challenge and opportunity; to guide the allocation of training and technical assistance resources; and to compile portfolio-wide data to report to external stakeholders. CNCS seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on April 30, 2020.

Dated: June 5, 2019.

Sarah Yue,

Senior Program and Project Specialist, AmeriCorps State and National.

[FR Doc. 2019–12963 Filed 6–18–19; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

U.S. Army Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the U.S. Army Science Board (ASB) will take place.

DATES: Thursday, July 17, 2019. Time: 7:30 a.m.–5:00 p.m.

ADDRESSES: The Arnold and Mabel Beckman Center of the National Academies of Sciences and Engineering, 100 Academy Way, Irvine, CA 92617.

FOR FURTHER INFORMATION CONTACT: Ms. Heather J. Gerard, (703) 545–8652 (Voice), 571–256–3383 (Facsimile), *heather.j.gerard.civ@mail.mil* (Email). Mailing address is Army Science Board, 2530 Crystal Drive, Suite 7098, Arlington, VA 22202. Website: *https://asb.army.mil/.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is for ASB members to review, deliberate, and vote on the findings and recommendations presented for five Fiscal Year 2019 (FY19) ASB studies.

Agenda: The ASB will present findings and recommendations for deliberation on the following FY19 studies: ''Reforming Talent Management in the Army'', ''Battlefield Uses of Artificial Intelligence'', ''Army Futures Command'', and ''An Independent Assessment of the U.S. Army Corps of Engineers' (USACE) Effectiveness in Delivering the Nation's Civil Works Program''. The open portion of the meeting is scheduled for July 17, 2019 from 7:30 a.m. to 3:00 p.m. and will be accessible to the public and press. The study ''An Independent Assessment of the Next Generation Anti-Armor

Strategy'' is classified and will be presented in a closed meeting at 3:30 p.m. to 5:00 p.m.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of the Army has determined that the 3:30 p.m. to 5:00 p.m. portion of the meeting shall be closed to the public. Specifically, consistent with 5 U.S.C. 552b(c)(1), the Administrative Assistant to the Secretary of the Army, in consultation with the Office of the Army General Counsel, has determined in writing that the public interest requires that the 3:30 p.m. to 5:00 p.m. portion of the committee's meeting will be closed to the public because the meeting is likely to disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and § 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the ASB about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the ASB. All written statements must be submitted to the Designated Federal Officer (DFO) at the address listed above, and this individual will ensure that the written statements are provided to the membership for their consideration. Written statements not received at least 10 calendar days prior to the meeting may not be considered by the ASB prior to its scheduled meeting. After reviewing written comments, the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–13000 Filed 6–18–19; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0070]

Proposed Collection; Comment Request

AGENCY: USTRANSCOM, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the USTRANSCOM, Military Surface Deployment and Distribution Command (SDDC) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 19, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of the Army, Military Surface Deployment and Distribution Command, 1 Soldier Way, Scott AFB IL 62225–5006, ATTN: Ms. Estella McNaughton, or call (571) 515–0231.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: SDDC Transportation Financial Management System (TFMS) Access Request; SDDC Form 417; OMB Control Number 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to establish Human Resource (HR) accounts within the Transportation Financial Management System (TFMS) for the Military Surface Deployment and Distribution Command (SDDC). The HR account is linked to the supplier module for payment of entitlements (Defense Travel System (DTS)). The information is also linked to the Defense Civilian Pay system (DCPS) for payment of civilian personnel for entitlements. The information is also used to establish and control user accounts in TFMS.

Affected Public: Individuals or Households.

Annual Burden Hours: 164.

Number of Respondents: 984.

Responses per Respondent: 1.

Annual Responses: 984.

Average Burden per Response: 10 minutes.

Frequency: As required.

Respondents are new employees that will be paid through DCPS, travelers that will be reimbursed using the SDDC line of accounting, or anyone requiring access to the accounting system to enter data or query exiting data. They are responding to the information collection to ensure they receive pay and benefits or to gain access to the accounting system as part of their assigned duties.

Dated: June 14, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–13030 Filed 6–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0071]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on

respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 19, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of Family Readiness Policy, ATTN: Pia Rose, Spouse Education & Career Opportunities Program, 4800 Mark Center Drive, Suite 03G15, Alexandria, VA 22350–2300 or call 800–342–9647.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Spouse Education and Career Opportunities Program (SECO); OMB Control Number 0704–0556.

Needs and Uses: This information collection requirement is necessary to allow eligible military spouses to access educational and employment resources. The DoD Spouse Education and Career Opportunities (SECO) Program is the primary source of education, career and employment counseling for all military spouses who are seeking post-secondary education, training, licenses and credentials needed for portable career employment. The SECO system delivers the resources and tools necessary to assist spouses of service members with career exploration/discovery, career education and training, employment readiness, and career connections at any point within the spouse career lifecycle.

Affected Public: Individuals or Households.

Annual Burden Hours: 19,500.

Number of Respondents: 26,000.

Responses per Respondent: 1.

Annual Responses: 26,000.

Average Burden per Response: 45 minutes.

Frequency: On occasion.

Dated: June 14, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–13035 Filed 6–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–06]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–06 with attached Policy Justification and Sensitivity of Technology.

Dated: June 13, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAY 0 3 2019

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-06 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Bahrain for defense articles and services estimated to cost $2.478 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 19-06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Bahrain

(ii) *Total Estimated Value*:

Major Defense Equipment *	$1.445 billion
Other	$1.033 billion
TOTAL	$2.478 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):

Sixty (60) Patriot Advanced Capability-3 (PAC-3) Missile Segment Enhancement (MSE) Missiles
Thirty-six (36) Patriot MIM-104E Guidance Enhanced Missiles (GEM-T) Missiles with Canisters
Nine (9) M903 Launching Stations (LS)
Five (5) Antenna Mast Groups (AMG)
Three (3) Electrical Power Plants (EPP) III
Two (2) AN/MPQ-65 Radar Sets (RS)
Two (2) AN/MSQ-132 Engagement Control Stations (ECS)

Non-MDE:

Also included is communications equipment, tools and test equipment, range and test programs, support equipment, prime movers, generators, publications and technical documentation, training equipment, spare and repair parts, personnel training, Technical Assistance Field Team (TAFT), U.S. Government and contractor technical, engineering, and logistics support services, Systems Integration and Checkout (SICO), field office support, and other related elements of logistics and program support.

(iv) *Military Department*: Army (BA-B-UKY)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex.

(viii) *Date Report Delivered to Congress*: May 3, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain—Patriot Missile System and Related Support and Equipment

The Government of Bahrain has requested to buy sixty (60) Patriot Advanced Capability-3 (PAC-3) Missile Segment Enhancement (MSE) missiles, thirty-six (36) Patriot MIM-104E Guidance Enhanced Missiles (GEM-T) missiles with canisters, nine (9) M903 Launching Stations (LS), five (5)

Antenna Mast Groups (AMG), three (3) Electrical Power Plants (EPP) III, two (2) AN/MPQ-65 Radar Sets (RS), and two (2) AN/MSQ-132 Engagement Control Stations (ECS). Also included is communications equipment, tools and test equipment, range and test programs, support equipment, prime movers, generators, publications and technical documentation, training equipment, spare and repair parts, personnel training, Technical Assistance Field Team (TAFT), U.S. Government and contractor technical, engineering, and logistics support services, Systems Integration and Checkout (SICO), field office support, and other related elements of logistics and program support. The estimated cost is $2.478 billion.

This proposed sale will support the foreign policy and national security of the United States by improving the security of a Major Non-NATO ally which is a force for political stability and economic progress in the Middle East. This sale is consistent with U.S. initiatives to provide key allies in the region with modern systems that will enhance interoperability with U.S. forces and increase security.

The proposed sale will enhance Bahrain's interoperability with the United States. Bahrain will use Patriot to improve its missile defense capability, defend its territorial integrity, and deter regional threats. Bahrain will have no difficulty absorbing this system into its armed forces.

The proposed sale of these missiles will not alter the basic military balance in the region.

The prime contractor for the PAC-3 Missile is Lockheed-Martin in Dallas, Texas. The prime contractor for the GEM-T missile is Raytheon Company in Andover, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require approximately 25 U.S. Government and 40 contractor representatives to travel to Bahrain for an extended period for equipment de-processing/fielding, system checkout, training, and technical and logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19-06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The Patriot Air Defense System contains classified CONFIDENTIAL hardware components, SECRET tactical software and critical/sensitive technology. Patriot ground support equipment and Patriot missile hardware contain CONFIDENTIAL components and the associated launcher hardware is UNCLASSIFIED. The items requested represent significant technological advances for Bahrain. The Patriot Air Defense System continues to hold a significant technology lead over other surface-to-air missile systems in the world.

2. The Patriot sensitive/critical technology is primarily in the area of design and production know-how and primarily inherent in the design, development and/or manufacturing data related to certain components. The list of components is classified CONFIDENTIAL.

3. Information on system performance capabilities, effectiveness, survivability, missile seeker capabilities, select software/software documentation and test data are classified up to and including SECRET.

4. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that the Government of Bahrain can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Bahrain.

[FR Doc. 2019–12917 Filed 6–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0068]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Rescindment of a system of records notice.

SUMMARY: The Defense Logistics Agency (DLA) is rescinding a system of records, S240.28 DoD, Case Adjudication Tracking System (CATS). This system of records recorded and documented personnel security adjudicative actions within the Department, federal agencies, and for DoD contractors. The system also provided a status of investigative and adjudicative updates to security officers, managers and other authorized users. With the transfer of responsibility for CATS from DLA to the Defense Manpower Data Center (DMDC), and subsequent publication of the DMDC 24 DoD, Defense Information System for Security (DISS), system of records notice, the DLA CATS system of records is no longer in use as it is subsumed within the DISS system of records. All records previously covered by the DLA CATS system of records are now covered by the DISS system of records.

DATES: This notice is applicable upon publication.

FOR FURTHER INFORMATION CONTACT: To submit general questions about the rescinded system, please contact Mr. Lewis Oleinick, Chief FOIA and Privacy Act Officer, Defense Logistics Agency, Office of General Counsel, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–6193.

SUPPLEMENTARY INFORMATION: On October 2, 2014, the Deputy Secretary of Defense signed Memorandum OSD010147, directing the transfer of the Defense Travel System (DTS) and the Defense Information System for Security (DISS) programs from DLA to the Defense Manpower Data Center (DMDC), a component of the Defense Human Resources Agency (DHRA). On July 27, 2015, DHRA and DLA signed a Memorandum of Agreement transferring operational and budgetary responsibility from DLA to DHRA. On June 15, 2016, the Office of the Secretary of Defense, DoD, published a new system of records, DMDC 24 DoD, Defense Information System for Security (DISS) (81 FR 39032). The DISS system of records is comprised of the Case Adjudication Tracking System (CATS) and the Joint Verification System (JVS).

The DLA CATS system of records has been subsumed within the DISS system of records and all records previously covered by the DLA CATS system of records are now covered by the DISS system of records. The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties and Transparency Division website at *http://dpcld.defense.gov/Privacy/SORNs/.*

The proposed systems reports, as required by the Privacy Act of 1974, as amended, were submitted on January 15, 2019, to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and on February 5, 2019, to the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

SYSTEM NAME AND NUMBER

Case Adjudication Tracking System (CATS), S240.28 DoD

HISTORY:

July 09, 2015, 80 FR 39418

Dated: June 13, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–12945 Filed 6–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Recommendation 2019–02

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; Recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a Recommendation to the Secretary of Energy concerning adequate protection of public health and safety in the event of an energetic accident at the Tritium Facilities at the Savannah River Site. Pursuant to the requirements of the Atomic Energy Act of 1954, as amended, the Defense Nuclear Facilities Safety Board is publishing the Recommendation and associated correspondence with the Department of Energy and requesting comments from interested members of the public.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or by July 19, 2019.

ADDRESSES: Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2001. Comments may also be submitted by e-mail to *comment@dnfsb.gov.*

FOR FURTHER INFORMATION CONTACT: Glenn Sklar at the address above or telephone number (202) 694–7000.

SUPPLEMENTARY INFORMATION:

Recommendation 2019–2 to the Secretary of Energy

Safety of the Savannah River Site Tritium Facilities

Pursuant to 42 U.S.C. 2286a(b)(5)

Atomic Energy Act of 1954, as Amended

Introduction. The Tritium Facilities at the Savannah River Site (SRS) consist of several defense nuclear facilities, including the 217–H Vault, Buildings 233–H and 234–H, and the Tritium Extraction Facility, used for processing and storing tritium. The Defense Nuclear Facilities Safety Board (Board) is concerned about adequate protection of the public health and safety in the event of an energetic accident at the Tritium Facilities.

The facilities' approved Documented Safety Analysis (DSA) and the November 2018 revision to the DSA awaiting approval by the National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) both have analyzed several credible accidents that could result in very high doses, creating the potential for acute radiation sickness or fatality [1] in a significant number of individuals. These energetic accidents include building-wide fires due to a variety of initiating events, crane drops, and explosions with the potential to release large quantities of tritium.

The probability of such an event within the lifetime of the facility is not negligible. Assuming a 50-year lifetime for the facilities, the probability that an unlikely event could occur within that time period ranges from 0.5 percent to about 40 percent. Such an event could lead to a significant number of potentially exposed individuals, posing a significant challenge to both SRS's emergency management system and to local emergency and medical facilities.

The current situation at the Tritium Facilities does not adequately address either DOE's standards of care or standards of practice as defined by its own requirements. Consequently, adequate protection is not assured. The Board has concluded that DOE needs to take actions to improve the safety of the Tritium Facilities, upgrades to safety management programs and the implementation of robust controls to ensure adequate protection of public health and safety.[2]

Recommendations. The Board recommends that DOE:

1. Identify and implement near-term compensatory measures at SRS to mitigate the potential for high radiological consequences to individuals who would be impacted by a release from the Tritium Facilities. (For example, potential near-term compensatory measures could include, but are not limited to reducing the material at risk (MAR) and/or limiting the number of potentially exposed individuals or other physical or administrative controls.)

2. Identify and implement long-term actions and controls to prevent or mitigate the hazards that pose significant radiological consequences to acceptably low values consistent with the requirements of DOE directives.

3. In parallel with the above recommendations, evaluate the adequacy of the following safety management programs and upgrade them as necessary to ensure that SRS can effectively respond to energetic accidents at the Tritium Facilities, and that it can quickly identify and properly treat potential victims:

a. The staffing and training requirements for individuals expected to take specific actions in response to alarms, abnormal operations, and emergencies;

b. The adequacy of the Emergency Preparedness programs in H-Area to account for all individuals in the vicinity and ensure that all potentially affected individuals understand their responsibilities and required actions in the event of a large tritium release from

[1] Acute radiation-induced sickness and acute radiation fatality, as used in this report, refers to possible outcomes of the acute radiation syndrome. This syndrome is the result of an acute, or short duration, exposure to a very high level of ionizing radiation. In this context, the word acute does not imply immediate incapacitation or death, as the syndrome and its impact on a human body may take hours to months to progress to recovery or death.

[2] The Board has raised concerns regarding the safety posture at the Tritium facilities since 1992. The Board's concerns over the potential for energetic accidents with very high calculated dose consequences have been frequently communicated to DOE. DOE has routinely responded to the Board's concerns with improvements in the safety controls, only to allow those controls to be downgraded after a number of years. (See the Attachment for a list of previous Board correspondence.)

the Tritium Facilities and are prepared to implement them;

c. The ability of the site's Fire Department to respond to fires, explosions, and other accidents at the Tritium Facilities that could lead to a large tritium release;

d. The capability of the site-wide radiological protection and occupational medicine programs to respond to an accident and monitor a large number of people with potentially serious uptakes of tritiated water vapor; and

e. The ability and preparedness of community emergency and medical resources to support the site in such situations.

Background

Effects of Tritium Release: Much of the in-process tritium at the Tritium Facilities may be in the form of gas, and material in storage is either in pressure vessels or deposited on hydride beds. Exposure to tritium gas does not result in significant doses to individuals, as the gas is not retained by the human body after inhalation. However, any significant release of tritium gas during an energetic accident or upset condition has a high potential of resulting in a fire, even if a fire did not initiate the release. In the energetic accidents of concern to the Board, tritium, an isotope of hydrogen, may be ignited, converted into water by oxidation, and then dispersed as a vapor.

Tritiated water vapor represents a significant risk to those exposed to it, as its dose consequence to an exposed individual is 15,000 to 20,000 times higher than that for an equivalent amount of tritium gas.[3] As with normal water vapor, tritiated water vapor is quickly absorbed into the lungs and through the skin, and rapidly mixes with the water in the body. The target organ for the exposure is the whole body, with a biological half-life[4] of 10 days [1]. The combination of a rapid intake and a short biological half-life means a large fraction of the radiological dose is acutely delivered within hours to days rather than chronically delivered over many months to years. Tritium's chemical and radiological characteristics also create difficult challenges that complicate the approaches to responding to such accidents and providing medical assistance to exposed individuals. A tritium release becomes even more challenging when considering that hundreds of workers in the SRS H-Area occupy the defense nuclear facilities and other administrative and training buildings surrounding the Tritium Facilities.[5]

Emergency Preparedness: Since 2011 the Tritium Facilities have conducted several seismic and/or multi-facility drills and exercises. The Board's staff have observed these drills and exercises and found that they have improved communications and coordination among the tritium facilities, as well as coordination of protective actions with other nuclear facilities within the H-Area. However, neither DOE nor the site contractor, Savannah River Nuclear Solutions (SRNS), has conducted exercises involving the evacuation of large numbers of individuals from an area due to a large tritium release, nor have they planned for the related logistical issues or for monitoring large numbers of individuals to identify those who might be at risk of a significant tritium intake and would require immediate medical intervention. While reliance on the Emergency Preparedness programs is not a long-term solution, this program will be essential in mitigating the consequences of a significant tritium release until an adequate control set can be implemented.

Past Communication: During a June 16, 2011, public hearing in Augusta, Georgia, the Board raised concerns regarding high consequences due to a potential fire in the Tritium Facilities. The Board further communicated this concern to NNSA in an August 19, 2011, Board correspondence in which it identified a shift in the safety philosophy applied to the Tritium Facilities at SRS. The Board noted that downgrading of safety related controls at the Tritium Facilities has ''weakened the safety posture, reduced the safety margin, and increased the potential for both the workers and the public to be exposed to higher consequences.''

The Deputy Administrator for Defense Programs replied to the Board's concerns on November 14, 2011, stating that NNSA would develop new analytical models to better understand the risk posed by the Tritium Facilities' operations, and at the same time NNSA would pursue ''additional interim safety controls for Tritium Facilities, such as MAR segregation'' to reduce the consequences of a potential accident. The attachment to the NNSA letter identified a series of analytical and administrative activities that SRNS would conduct and stated that, ''A review of the control selection for the design basis events considering the new analysis will be performed. Emphasis will be placed on utilizing existing passive and active engineered controls vice administrative controls. Any changes to controls will be reflected in a future update to the Documented Safety Analysis.''

A letter from SRNS to NNSA dated July 12, 2018 [2], indicates that SRNS is considering a number of engineering controls, but the Board is not aware of any formal actions or implementation of any near-term compensatory measures based on this strategy. SRNS's proposed strategy mainly consists of performing analyses. These analyses may result in SRNS proposing revisions to the Tritium Facilities DSA to credit existing engineered controls or may lead SRNS to pursue installation of new engineered controls. Any physical modifications or additions would likely take years to implement under SRNS's proposed strategy. Furthermore, the Board is not aware of any commitments made by NNSA to implement engineered controls based on the contractor's strategy.

Conclusion. The Board has concluded that adequate protection of public health and safety currently is not assured, should an accident, such as an earthquake or large fire, occur at these facilities and there continues to be a risk of exposure to significant radiological consequences in case of an energetic event at these facilities.

Bruce Hamilton, Chairman

Recommendation References

1. Canadian Nuclear Safety Commission, Health Effects, Dosimetry and Radiological Protection of Tritium, Minster of Public Works and Government Services Canada, INFO–0799, April 2010.

2. Spangler, R. W., Senior Vice President NNSA Operations and Programs, SRNS, letter to N. N. Nelson-Jean, NNSA Savannah River Field Office, Transmittal of the Schedule for Implementing the Strategy for Risk Reduction to the Co-Located Worker in Tritium Facilities (U), SRNS–T0000–2018–00227, July 12, 2018.

Risk Assessment for Recommendation 2019–2

Safety of the Savannah River Site Tritium Facilities

In making its recommendations to the Secretary of Energy and in accordance

[3] The ratio of the dose conversion factors for inhalation between tritiated water and tritium gas is a factor of 10,000; additionally, a factor of 1.5 is applied for the workers, and a factor of 2.0 is applied for the public, to account for tritiated water absorption through the skin [1].

[4] The biological half-life is defined as ''the time required in a given radionuclide for its activity to decrease, by biological clearance and radiological decay, to half its original activity'' [8]. This half-life is a function of the radiological half-life of the radioactive material and how rapidly it is removed from the body by metabolic processes.

[5] A training building with a cafeteria is about 300 meters from the Tritium Facilities; the building hosts a significant transient population.

with 42 U.S.C. 2286a.(b)(5), the Board shall consider, and specifically assess risk (whenever sufficient data exists). Risk is generally defined as the quantitative or qualitative expression of possible loss that considers both the likelihood that an event will occur and the consequences of that event. For Recommendation 2019–2, Safety of the Savannah River Site Tritium Facilities, sufficient data does not exist to precisely determine the likelihood that an event will occur and the consequences of that event. However, the Board can use information from the Tritium Facilities' DSAs to develop a qualitative risk assessment.

The Tritium Facilities' DSAs use risk binning to estimate the frequencies of several of the energetic accidents discussed in the Recommendation to be Unlikely, which DOE Standard 3009, Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Documented Safety Analyses, assigns a frequency range of 10^{-2} to 10^{-4} per year. Assuming a 50-year lifetime for the facility, and given the broad frequency range, the probability that an event could occur within that time period ranges from 0.5 percent to about 40 percent.

The large-scale release of tritium postulated for these accidents has a significant potential to result in acute injuries or fatalities. Such an event could lead to a significant number of potentially exposed individuals, resulting in a mass casualty situation that would pose a significant challenge both to the Savannah River Site's emergency management system and to local emergency and medical facilities.

Therefore, the Board has determined the qualitative risk at the Savannah River Site's Tritium Facilities is significant enough to require the Department of Energy to take action.

Findings, Supporting Data, and Analysis

Degradation of Safety Posture

Introduction—In December 1991, Congress amended the Defense Nuclear Facilities Safety Board's (Board) enabling legislation, expanding its jurisdiction into defense nuclear facilities and activities involved in the assembly, disassembly, and testing of nuclear weapons. According to the Board's 1992 Annual Report to Congress [1]:

As a consequence, additional technical activities were conducted at the following plants, sites and laboratories:

- Pantex Plant,
- Oak Ridge Y–12 Plant,
- Los Alamos National Laboratory,
- Tritium Facilities at the Savannah River Site,
- Building 991 at Rocky Flats,
- Nevada Test Site,
- Sandia National Laboratories (Albuquerque and Livermore),
- Lawrence Livermore National Laboratory, and
- Pinellas Plant

As part of these additional technical activities, in 1992 the Board and its staff began to review safety basis documents for Building 233–H (known at the time as the Replacement Tritium Facility, RTF) [2–9]. At that time the facility had been built but had not commenced operations. Later, the Board reviewed the design and safety basis of the Tritium Extraction Facility from the conceptual design stage to its final startup. In both cases, the Board identified safety issues that were remediated by design modifications or administration of operational limits to ensure that the public and the workers were adequately protected.

Since the Board's initial interactions with the Tritium Facilities in 1992, the Board's concerns over the potential for energetic accidents with very high dose consequences have been frequently communicated to the Department of Energy (DOE). A listing of those communications is provided in the Attachment. These communications and the DOE responses to them illustrate a pattern that, in itself, is a concern to the Board. The Board's early involvement in the safety of the Tritium Facilities prompted DOE to implement a range of safety improvements; however, those improvements either were downgraded or were found to be ineffective by 1999. After the Board's interactions with DOE in 1999, improvements were again identified and implemented. By 2011, those improvements had been downgraded and the Board found it necessary to raise the subject again. Today, the Board has determined that its concerns are such that a formal Recommendation is needed to ensure prompt action is taken and sustained.

As noted, in 2011 the Board identified a degradation in the facilities' safety posture that appears to have begun in the period between 1999 and 2011. The Board initially communicated those concerns in 2011, and the National Nuclear Security Administration (NNSA) responded on November 14, 2011, with a series of commitments that included updating the methodology and assumptions to meet current DOE requirements and expectations for conservative analyses, as reflected in Subpart B to 10 CFR 830 and its safe harbor methodology in DOE Standard 3009–94. NNSA also stated that ''A review of the control selection for the design basis events considering the new analysis will be performed. Emphasis will be placed on utilizing existing passive and active engineered controls vice administrative controls. Any changes to controls will be reflected in a future update to the Documented Safety Analysis (DSA).'' The current Savannah River Site (SRS) contractor, Savannah River Nuclear Solutions LLC (SRNS), submitted that DSA update to NNSA's Savannah River Field Office (SRFO) in July 2017. SRFO requested and the contractor submitted a revised version of that DSA on November 2018, and it is currently undergoing DOE's review and approval process. Consequently, the currently approved safety bases still contain many of the weaknesses that concerned the Board in 2011.

The following discussions briefly describe some of the original activities and the controls applied to for Building 233–H. This building contains the majority of the process tritium inventory and poses the most unmitigated risk in case of an energetic accident.

Building 233–H's Past Safety Basis—The Board and DOE worked through several issues with the hazards analysis and control set in the original Final Safety Analysis Report (FSAR) [6] [2–9] during the early 1990s, prior to startup of Building 233–H. The fire event analyzed in the FSAR was based on 0.1 percent oxidation of the tritium released during the accident. The site contractor at the time, Westinghouse Savannah River Company [7] (WSRC) performed a conservatively bounding analysis assuming that 100 percent of the tritium would be oxidized in a facility fire and documented this analysis in an addendum to the FSAR. Furthermore, WSRC performed a seismic analysis that indicated that a stack would collapse on top of the tritium reservoir storage vault. DOE and WSRC designed and constructed more than a dozen safes known as HIVES (Highly Invulnerable Encased Safes) to protect the storage reservoirs from the impact load of a stack and vault roof collapse. The bounding scenario conservatively calculated the consequences of a seismic event that triggers a fire involving the entire inventory from the

[6] Final Safety Analysis Reports were a predecessor to the current Documented Safety Analysis documents.

[7] The current SRS contractor, Savannah River Nuclear Solutions assumed responsibility for the site in August 2008. The prior contractor at the site, Westinghouse Savannah River Company, assumed responsibility for the site in 1989. In 2005, Westinghouse Savannah River Company changed its name to Washington Savannah River Company.

reservoirs and the process systems [9]. The maximum individual dose at the site boundary for a two hour exposure was estimated to be about 5.1 rem total effective dose equivalent (TEDE,[8] an ionizing radiation dose unit in use at the time). The corresponding value for onsite dose was 328 rem TEDE. [This value was calculated prior to the issuance of DOE Standard 3009; the 1993 calculation used an older methodology and different assumptions than those currently accepted for safety analyses. Consequently the results cannot be compared to the values in the current safety bases.]

The FSAR control set ultimately established by WSRC was a mixture of administrative operational limits and engineered controls. An administrative control limited the total amount of tritium in the facility, including the reservoirs in the seismically qualified areas. Four limiting conditions for operations (LCO) limited the system pressure for the relief tanks, contaminated nitrogen tanks, and the Z-bed recovery tanks to sub-atmospheric conditions to protect their inventory from a system rupture. An additional three LCOs limited the inventory of the mix tanks, deuterium storage beds, and the tritium reservoirs, which were stored in non-seismically qualified areas [7]. WSRC classified the HIVES as safety related [9] to protect the reservoirs in the vault from impacts. Finally, WSRC used a tritium storage seismic detection and isolation system to further reduce the amount of tritium released during a seismic event. Over the years though, many of the above controls were eliminated or downgraded for various reasons. It is useful to review previously implemented controls for ideas on how the Board's current concerns might be addressed.

During a June 16, 2011, public hearing in Augusta, Georgia, the Board raised concerns regarding high consequences to co-located workers due to a potential fire in the Tritium Facilities. The Board further communicated this concern to NNSA in a Board correspondence dated August 19, 2011, in which the Board identified a shift in the safety philosophy applied to the Tritium Facilities at SRS. The Board noted that the downgrading of safety related controls at the Tritium Facilities has ''weakened the safety posture, reduced the safety margin, and increased the potential for both the workers and the public to be exposed to higher consequences.''

NNSA's Deputy Administrator for Defense Program sent a letter to the Board on November 14, 2011, that relayed the Tritium Facilities commitments to the Board for improving safety posture of those facilities. In the attachment to that letter, the field office manager stated that, ''A review of the control selection for the design basis events considering the new analysis will be performed. Emphasis will be placed on utilizing existing passive and active engineered controls vice administrative controls. Any changes to controls will be reflected in a future update to the Documented Safety Analysis (DSA).'' SRNS submitted that DSA update to SRFO in July 2017. As previously noted, correspondence between SRFO and the SRNS led to a revised DSA submitted in November 2018, which is currently in DOE's review and approval process.

Tritium Facilities' Current Safety Basis—The current safety basis of the Tritium Facilities is comprised of a DSA [10] and technical safety requirements (TSR) [11] that are derived from the DSA.[10] The DSA and TSR documents contain a set of controls that SRNS commits to maintain to assure adequate protection. The DSA is supported by a comprehensive hazard analysis documented in the Consolidated Hazards Analysis Process (CHAP) [12], which is not subject to NNSA's review and approval. The CHAP concluded that ''[f]or some events, the mitigated consequences remained in the B1 or B region [consequence categories that require safety class controls for the public or safety significant controls for workers] because available controls either did not exist and/or were insufficient'' to reduce the unmitigated dose consequences to the co-located workers for several high consequence accidents.

The calculated dose consequences supporting the current DSA were based on calculations performed in 2008. Those calculated dose consequences for the energetic accidents of concern in this Recommendation ranged up to 6,300 rem total effective dose (TED) to the co-located workers and about 2 to 13 rem TED to the offsite public [13–17]. While those calculations were based on methods and assumptions accepted at the time, they do not meet current DOE expectations for safety basis calculations. More recent analysis, completed by SRNS in 2013, concluded that, using current methodology and assumptions, the calculated dose consequences would increase by a bounding factor of 7.42 for the co-located worker and a bounding factor of 3.45 for the offsite public [18]. It should be noted that NNSA reduced the limit on the total amount of tritium that can be present within the Tritium Facilities by about half in 2011, as discussed in the November 14, 2011, letter to the Board, but that reduction has not been included in the bounding factors given above. These factors are bounding values because there will be some variation in the parameters specific to each accident scenario.

Feasible solutions to address concerns could consist of several controls, each providing layers of protection. Furthermore, solutions may require pursuing controls that dramatically reduce the probability of an initiator, but may not fully prevent an accident. For example, a seismic power cut off system may eliminate many, but not all, ignition sources present in a facility following a seismic event because some systems may be required to continue to function or may have stored energy. Similarly, the reliability of systems like fire suppression systems may be improved through upgrades and modifications or performance of additional surveillances and maintenance, but they may not be able to be fully qualified to protect individuals after all seismic events.

Mitigative controls, such as minimizing the number of non-essential personnel in close proximity to the Tritium Facilities; using readily available technologies to minimize humidity in the air of buildings used for sheltering in place; and having pre-approved plans for decreasing the biological half-life of tritium, could potentially reduce both the number of individuals with intakes and the severity of those intakes. The development of near- and long-term solutions may involve an integrated approach using multiple forms of controls.

[8] There are two basic components to an individual's radiation dose, the dose from internal emitters and the dose from external emitters. Prior to 2007, the dose from internal emitters such as tritiated water was measured in rem Committed Effective Dose Equivalent (rem CEDE); the dose from external radiation sources such as an X-ray machine was measured in rem Effective Dose (rem ED); and the sum of the two components was the Total Effective Dose Equivalent (rem TEDE). In 2007 the units were changed to committed effective dose (rem CED) and total effective dose (rem TED), but they are numerically equivalent to doses in rem CEDE and rem TEDE.

[9] The RTF startup activities preceded DOE's creation and issuance of Standard 3009–94. The terminology of ''safety related'' was meant for protection of the public and/or the workers.

[10] At the time of this writing the Tritium Extraction Facility (TEF) was operating under a separate safety basis, but SRNS combined the two safety bases in the DSA submitted in November 2018. However, TEF has a much smaller inventory than the main processing building so it is not discussed extensively in this section.

Analysis of Emergency Preparedness at the Savannah River Site

The attachment to the NNSA letter dated November 14, 2011, described improvements that would be made to the site Emergency Preparedness program to respond to a significant event at the Tritium Facilities. The Tritium Facilities conducted several seismic and/or multi-facility drills and exercises in subsequent years. The Board's staff observed these drills and exercises and the planned improvements. The drills and exercises improved communications and coordination among the Tritium Facilities and helped improve coordination of protective actions with other nuclear facilities within H-Area. The Tritium Facilities also have made emergency preparedness drill and exercise scenarios more challenging by including deflagrations and stack collapses, and have tested their ability to respond to accidents during night shifts, when staffing is lower.

However, the Tritium Facilities Emergency Preparedness program has not prepared responses to the full range of credible accidents in the DSA and the Emergency Planning Hazards Assessments (EPHA). The DSA includes credible scenarios with co-located worker doses reaching calculated dose consequences in the thousands of rem. The radiological consequences in the EPHAs [19, 20] are usually lower because of differences in the analytical methodologies and assumptions, but still range up to 700 rem TED for co-located workers and 62 rem TED for workers at the nearby central training facility (which also includes a cafeteria). However, the dose consequences to workers in the most challenging drills and exercises [21, 22] were less than 5 rem TED.

The default protective actions for the Tritium Facilities' Emergency Action Levels are to evacuate the immediate area, and for all others to remain indoors (as well as close all doors and windows, and turn off ventilation to the building) [23, 24]. During tritium drills and exercises, this usually involves having workers evacuate the affected process area and/or evacuate from the affected building to another nearby building within the Tritium Facilities. However, the EPHA has scenarios where the maximum distance for the Threshold for Early Lethality may extend up to 320 meters, beyond the Tritium Facilities fence line.

Part of the reason for the lower radiological consequences in the drills and exercises is that the assumed releases are much smaller because the Seismic Tritium Confinement System is assumed to function and confine the inventory during a seismic event. However, the DSA does not qualify this system to be credited during a seismic event. Additionally, the drills and exercises often limit explosions and fires to one room, rather than involving the entire building, as the DSA and EPHA assume. Because the radiological consequences in the drill and exercise scenarios are much lower than those in the DSA and EPHA, the drill and exercise scenarios assume that Tritium Facilities personnel can remain safely indoors indefinitely, that operators can perform their assumed response actions with little impact from the release, that those workers evacuating to another building within the Tritium Facilities do so without any adverse effects, and that the medical response is usually limited to injured workers with relatively minor contamination or intakes.

Using radiological consequences from the severe accidents in the DSA or EPHA, however, might drive the need to evacuate personnel at the Tritium Facilities, and possibly other nearby areas, to a safer location to avoid a significant intake. SRS does not have any procedural guidance or criteria for when workers should evacuate the Tritium Facilities area, and possibly other nearby areas, rather than remain indoors, due to the potential for acute radiological consequences [23–26]. Furthermore, SRS has not conducted exercises involving evacuation of a large number of workers from an area due to a radiological release, nor has the site planned for the related logistical issues such as evacuating or monitoring a large number of workers to determine which ones may be at risk of a significant tritium uptake and may require medical intervention.

Findings, Supporting Data, and Analysis References

Note: The current SRS contractor, Savannah River Nuclear Solutions assumed responsibility for the site in August 2008. The prior contractor at the site, Westinghouse Savannah River Company, assumed responsibility for the site in 1989. In 2005, Westinghouse Savannah River Company changed its name to Washington Savannah River Company.

1. Defense Nuclear Facilities Safety Board, Annual Report to Congress, April 1993.
2. Westinghouse Savannah River Company, RTF Safety Analysis Report, DOE Approval Copy, Rev.1, WSRC–SA–1–1, August 28, 1992.
3. K.R. O'Kula, RTF Compliance with Department of Energy Safety Goal, WSRC–TR–93–183, April, 1993.
4. Westinghouse Savannah River Company, RTF Safety Analysis Report, Attachment 5.B Integrated DBE Analysis, Vol 20, Revision 0, WSRC–SA–1–1, August 23, 1993.
5. N.K. Savani, Request for Information on the DBE Analysis, SRT–TML–93–0052, May 5, 1993.
6. J. Robertson, Determining Inventory LCOs for RTF, S NMP–SDG–93–0076, Revision 4, September 20, 1993.
7. Westinghouse Savannah River Company, RTF Final Safety Analysis Report, Inventory Control, Revision 0, WSRC–SA–1–1–VOL–19, August 26, 1993.
8. Westinghouse Savannah River Company, RTF Final Safety Analysis Report, Integrated DBE Analysis, Revision 0, WSRC–SA–1–1–VOL–20, August 26, 1993.
9. S.J. Robertson, White Paper; Basis for MID Calculations for RTF DBA and BDBA Scenarios, September 20, 1993.
10. Savannah River Nuclear Solutions, LLC, Tritium Facilities Documented Safety Analysis, Rev. 23, WSRC–SA–1–2, Vol. 1 and 2, May 2017.
11. Savannah River Nuclear Solutions, LLC, Tritium Facilities Technical Safety Requirements, Rev. 28, WSRC–TS–96–17, May 2017.
12. Savannah River Nuclear Solutions, LLC, Tritium Facilities Consolidated Hazards Analysis, Rev. 11, WSRC–TR–2004–00163, May 2017.
13. Washington Savannah River Company, Tritium Facilities Loss of Confinement Accident Analysis (U), Rev. 0, S–CLC–H–01127, February 2008.
14. Washington Savannah River Company, Tritium Facilities Fire Accident Analysis (U), Rev. 0, S–CLC–H–01131, February 2008.
15. Washington Savannah River Company, Tritium Facilities Explosion Accident Analysis (U), Rev. 0, S–CLC–H–01137, February 2008.
16. Washington Savannah River Company, Tritium Facilities Natural Phenomena Plus Fire Accident Analysis (U), Rev. 0, S–CLC–H–01139, February 2008.
17. Washington Savannah River Company, Tritium Facilities Natural Phenomena Plus Loss of Confinement Accident Analysis (U), Rev. 0, S–CLC–H–01144, February 2008.
18. Savannah River Nuclear Solutions, Dispersion Modeling Project Implementation, S–ESR–G–0033, Rev. 0, October 2013.
19. Savannah River Nuclear Solutions, LLC, Emergency Planning Hazards Assessment for the Tritium Facilities (TF), Rev. 10, S–EHA–H–00006, March 2016.
20. Savannah River Nuclear Solutions, LLC, Emergency Planning Hazards Assessment for the Tritium Extraction Facility (TEF), Rev. 2, S–EHA–H–00009, January 2016.
21. Savannah River Nuclear Solutions, LLC, Savannah River Site 2012 Site Emergency Response Organization Emergency Preparedness Evaluated Exercise Multiple-Facility/Multiple-Contractor Seismic Event, Rev. 03, F9640052.DRSC000103, April 2012.

22. Savannah River Nuclear Solutions, LLC, Savannah River Tritium Enterprise 2017 Facility Emergency Preparedness Evaluated Exercise, Rev. 00, F3040087.DRSC000100, July 2017.
23. Savannah River Nuclear Solutions, LLC, Emergency Classification (EALs), Rev. 29 EPIP TRIT–001, IPC 1, May 1, 2017.
24. Savannah River Nuclear Solutions, LLC, FEC Response Actions, Rev. 35, EPIP TRIT–111, April 24, 2018.
25. Savannah River Nuclear Solutions, LLC, Fire and Fire Alarm Response, Process Buildings, Rev. 31, EOP TRIT–1468, May, 31, 2018.
26. Savannah River Nuclear Solutions, LLC, Response to Severe Weather and Natural Disasters, Rev. 21, AOP TRIT–6122, IPC–1, August 16, 2018.

Attachment

Summary of Board Correspondence Concerning Safety at the Tritium Facilities

- December 18, 1995
- To: Assistant Secretary for Environmental Management
- Subject: Central Training Facility capability to respond to releases
- March 18, 1999
- To: Under Secretary of Energy
- Subject: Review of Draft Consolidated Tritium Safety Analysis Report
- December 7, 1999
- To: Assistant Secretary for Defense Programs
- Subject: Design review for Tritium Extraction Facility
- July 19, 2002
- To: National Nuclear Security Administration Deputy Administrator for Defense Programs
- Subject: Seismic safety at the Tritium Extraction Facility
- July 16, 2010
- To: NNSA Administrator and Assistant Secretary for Environmental Management
- Subject: Inclusion of controls concern at the Savannah River Site
- August 19, 2011
- To: NNSA Administrator
- Subject: Review of Safety Basis, Savannah River Site Tritium Facilities
- August 7, 2014
- To: NNSA Administrator
- Subject: Summary of Board views on current challenges faced by NNSA
- January 7, 2016
- To: NNSA Administrator
- Subject: Review of the Tritium Extraction Facility Documented Safety Analysis
- June 4, 2018
- To: Secretary of Energy
- Subject: Review of the Revised Documented Safety Analysis at Tritium Facilities

Supplemental Staff Analysis of Dose Consequences

The calculated dose consequences supporting the current DSA were based on calculations performed in 2008. Those calculated dose consequences for the energetic accidents of concern in this Recommendation ranged up to 6,300 rem total effective dose (TED) [11] to the co-located workers and about 2 to 13 rem TED to the offsite public [1–5]. Those calculations were based on methods and assumptions accepted at the time. More recent analysis, completed by the SRS contractor in 2013, concluded that using current methodology and assumptions would increase the calculated dose consequences by a bounding factor of 7.42 for the co-located worker and a bounding factor of 3.45 for the offsite public [6].[12] It should be noted that SRS lowered the limit on the total amount of tritium that can be present within the Tritium Facilities by about a factor of two in 2011, but that reduction has not been included in the bounding factors given above. These factors are bounding values because there will be some variation in the parameters specific to each accident scenario. The calculations supporting the revised DSA indicate that calculated dose consequences for the co-located worker could exceed 18,000 rem TED for some scenarios. [7]

According to the International Commission on Radiation Protection (ICRP), the threshold dose for a 1 percent incidence rate of fatality in an exposed population is 100 rad,[13] and the threshold for a 50 percent incidence of fatality in an exposed population is 300 to 500 rad, assuming no medical intervention [8]. The onset of radiation-induced sickness generally coincides with the 1 percent fatality threshold. These thresholds are for acute exposures that are the result of external radiation sources at very high dose rates, such as those that occur during a criticality accident.

However, high protracted exposures that occur over periods of days to weeks can also result in injury or fatality, but with somewhat higher thresholds. ICRP reports that for exposures where the dose rate is about 20 rad/hour the thresholds may increase by about 50 percent, and if the dose is delivered over the period of a month the thresholds may double [8]. This increase in thresholds is due to the fact that for lower dose rates, the body has more opportunity to repair the damage, thus reducing the likelihood of injury or fatality. Therefore, protracted doses are evaluated by looking at both the accumulated dose and the rate at which the dose accumulates.

For internal exposures such as the situations addressed in this Recommendation, the dose to an exposed individual is cited as the committed effective dose, which is the total dose that has accumulated in the body until the radioactive material has either decayed away or been eliminated through biological processes. The accumulation time is dependent on the specific radioactive material and its chemical form. Some materials such as tritium gas are not retained in the body for any significant amount of time; other materials, such as plutonium oxide, will be retained in the body for many years.

Dose Consequences to Workers and Co-Located Workers: The behavior of tritiated water in the body can be modelled in a straightforward manner. For the doses evaluated here, it is assumed that the exposures occur within a 3-minute or 20-minute time period in accordance with the specific DSA scenarios, and that the biological half-life of tritiated water in the body is 10 days [9]. Although the intake is of a short duration, the rate at which the radiation from the decay of the tritium deposited in the body is determined by the biological half-life. Therefore, the doses from tritiated water in the body tend to be protracted doses, and must be compared against the ICRP's protracted dose thresholds. Given these conditions, the total dose and dose rates associated with an intake of tritiated water are inherently related to each other such that one can predict either parameter if the other parameter is known. This relationship allows one to directly determine the specific total dose and dose rate associated with each of the ICRP mortality thresholds discussed above.

Table 1 shows that a postulated total dose of about 18,000 rem TED will

[11] There are two basic components to an individual's radiation dose, the dose from internal emitters and the dose from external emitters. Prior to 2007, the dose from internal emitters such as tritiated water was measured in rem Committed Effective Dose Equivalent (rem CEDE); the dose from external radiation sources such as an X-ray machine was measured in rem Effective Dose (rem ED); and the sum of the two components was the Total Effective Dose Equivalent (rem TEDE). In 2007 the units were changed to committed effective dose (rem CED) and total effective dose (rem TED), but they are numerically equivalent to doses in rem CEDE and rem TEDE.

[12] These multiplication factors only apply to the calculated radiological dose consequences for certain accident scenarios (depending on the input parameters). Other accident scenarios may have a smaller multiplication factor.

[13] The rad is a unit of absorbed dose, which is the quantity used for evaluating the potential for deterministic ionizing radiation effects such as acute injury or fatality. In the case of tritiated water vapor, the absorbed dose in rad is numerically equal to the committed effective dose.

exceed the dose threshold for radiation-induced sickness within the first two hours, and a postulated dose of about 3,500 rem TED will exceed the onset of radiation-induced sickness within the first fifteen hours (the onset of radiation-induced sickness generally coincides with the 1 percent fatality threshold). Once the absorbed doses exceed the injury threshold, the onset of symptoms of radiation-induced sickness likely will occur within hours to a day. When these symptoms are observed, medical personnel would begin more aggressive life-saving interventions on those individuals.

TABLE 1—THRESHOLD DOSE AND DOSE RATE CRITERIA WITH NO MEDICAL INTERVENTION

Threshold criteria [8]			Corresponding tritium total dose *	
Criteria	Threshold dose rate	Threshold dose	Total dose	Time to threshold dose
Acute Threshold for 1% Mortality**	~50 rad/hr and up	100 rad	18,000 rem TED	2 hours.
Upper Protracted Threshold for 1% Mortality.	~10–30 rad/hr	150 rad	3,500 rem TED	15 hours.
Lower Protracted Threshold for 1% Mortality.	~0.3 rad/hr	200 rad	250 rem TED	28 days.
Acute Threshold for 50% Mortality	~50 rad/hr and up	300–500 rad	18,000 rem TED	6 hours.
Upper Protracted Threshold for 50% Mortality.	~10—30 rad/hr	450–750 rad	3,500 rem TED	45 hours.
Lower Protracted Threshold for 50% Mortality.	~0.8 rad/hr	600–1000 rad	750 rem TED	31 days.

* When a range of doses or dose rates is used in the threshold criteria, the corresponding tritium dose and time to threshold dose were determined using the lower values in order to identify the lowest total dose that would exceed the specified threshold dose.

** A 1 percent or 50 percent mortality threshold means that at the specified dose and dose rate values, fatalities could be expected in 1 percent or 50 percent of the exposed population, with no medical intervention.

Prior to the onset of radiation-induced sickness, early medical intervention for tritiated water intakes could be taken by aggressively increasing fluid exchange in the patient. This could reduce the biological half-life to as little as three days [10]. Such intervention would reduce the total dose by up to about 60 percent, but would have no impact on the dose already accumulated in the individual prior to the onset of treatment. However, tritium's chemical and radiological characteristics create difficult challenges that complicate the approaches to responding to such accidents and providing medical assistance to exposed individuals. For example, detection of tritium contamination in the field and assessment of potential intakes require specialized equipment, expertise, and most importantly, timely response.[14]

It must also be recognized that the dose to co-located workers is calculated at 100 meters from the release point or at the point of plume touchdown, whichever results in a higher dose. Doses within that first 100 meters could be much higher, depending on the release mechanism and plume travel path. However, current models cannot accurately estimate doses to individuals nearer than 100 meters, as the doses are very sensitive to the specifics of each release mechanism, the effects of building wakes, the location of the individual, and a variety of other parameters. Consequently, radiation-induced sickness or fatalities within the facility workers should be anticipated for all accidents where the 100-meter dose is above 100 rem TED.

Dose Consequences to the Offsite Public: While the facilities' DSAs estimate that the calculated dose consequences to individuals beyond the site boundary from these accidents are low enough to avoid immediate acute health effects, they do represent the potential for an increased likelihood of latent cancer fatalities in the exposed population [8]. In addition, the calculated dose consequences challenge DOE's evaluation guideline of 25 rem TED for safety-class controls. (The evaluation guideline is not to be viewed as an acceptable dose; it is a tool for determining the need for safety class controls.) However, the currently approved DSAs do not provide an adequate set of controls to prevent or mitigate some of these accidents.

It is no coincidence that the calculated dose consequences to the offsite public approach the evaluation guideline for the same accident scenarios that result in very high calculated dose consequences to facility workers and co-located workers. As discussed in the Board's Technical Report, Protection of Collocated Workers at the Department of Energy's Defense Nuclear Facilities and Sites [DNFSB/Tech-20, 1999], protection of the offsite public rests heavily on measures taken to protect co-located workers, and protection of co-located workers rests heavily on measures taken to protect the immediate facility workers. In other words, protection of the public begins with the protection of the workers.

[14] The Board's staff does not have confidence that current field equipment can provide the ability to rapidly screen a large group of individuals for potential intakes. Given these circumstances, the onset of symptoms from acute radiation sickness may be the first signs of a significant tritium intake, which would preclude early medical intervention. Dealing with the large number of people who could be adversely affected by a significant release at the Tritium Facilities could severely strain or overwhelm local emergency response and medical resources.

References

1. Washington Savannah River Company, Tritium Facilities Loss of Confinement Accident Analysis (U), Rev. 0, S–CLC–H–01127, February 2008.
2. Washington Savannah River Company, Tritium Facilities Fire Accident Analysis (U), Rev. 0, S–CLC–H–01131, February 2008.
3. Washington Savannah River Company, Tritium Facilities Explosion Accident Analysis (U), Rev. 0, S–CLC–H–01137, February 2008.
4. Washington Savannah River Company, Tritium Facilities Natural Phenomena Plus Fire Accident Analysis (U), Rev. 0, S–CLC–H–01139, February 2008.
5. Washington Savannah River Company, Tritium Facilities Natural Phenomena Plus Loss of Confinement Accident Analysis (U), Rev. 0, S–CLC–H–01144, February 2008.
6. Savannah River Nuclear Solutions, Dispersion Modeling Project Implementation, S–ESR–G–0033, Rev. 0, October 2013.
7. Savannah River Nuclear Solutions, Consolidated Hazard Analysis for the Savannah River Site Tritium Facilities, S–CHA–H–00030, Rev. 0, June 2017.
8. International Commission on Radiation Protection, 2007 Recommendations of the International Commission on Radiological Protection, ICRP 103, Volume 37, No. 2–4., New York: Elsevier Ltd., 2007.
9. Canadian Nuclear Safety Commission, Health Effects, Dosimetry and Radiological Protection of Tritium, Minster of Public

Works and Government Services Canada, INFO–0799, April 2010.

10. Carbaugh, E H, et al. Methods and Models of the Hanford Internal Dosimetry Program, PNNL–MA–860, Pacific Northwest National Laboratory, Richland, WA, PNNL–15614, Rev. 1, September 2009.

Correspondence With the Secretary of Energy

Department of Energy Request for Extension of Time

March 12, 2019
The Honorable Bruce Hamilton
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue NW, Suite 700
Washington, DC 20004

Dear Chairman Hamilton:

The Department of Energy (DOE) received the Defense Nuclear Facilities Safety Board (DNFSB) Draft Recommendation 2019-1, Safety of the Savannah River Site Tritium Facilities, on February 11, 2019, and is currently coordinating its review among relevant offices. In accordance with 42 U.S.C. 2286d(a)(2), the Department requests a 30-day extension to provide comments. DOE's Under Secretary for Nuclear Security, Lisa E. Gordon-Hagerty, will provide the response to the DNFSB by April 12, 2019.

DOE is committed to the safe operations at the Savannah River Site Tritium Facilities. As you may be aware, DOE has already taken actions to address concerns identified in the Draft Recommendation. A 30-day extension will afford DOE sufficient time to assess the Draft Recommendation's findings, supporting data, and analyses.

If you have any questions, please contact Ms. Nicole Nelson-Jean, Manager of the Savannah River Field Office, at (803) 208-3689.

Sincerely,
Rick Perry

Defense Nuclear Facilities Safety Board Response to Extension Request

March 15, 2019
The Honorable James Richard Perry
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585-1000

Dear Secretary Perry:

The Defense Nuclear Facilities Safety Board is in receipt of your March 12, 2019, letter requesting a 30-day extension to provide comments on the Board's Draft Recommendation 2019-01, Safety of the Savannah River Site Tritium Facilities.

In accordance with 42 U.S.C. 2286d(a)(2), the Board is granting the extension for an additional 30 days.

Yours truly,
Bruce Hamilton
Chairman

Department of Energy Comments on Draft Recommendation

The Honorable Bruce Hamilton,
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana NW, Suite 700
Washington, DC 20004

Dear Chairman Hamilton:

The Department of Energy's National Nuclear Security Administration (DOE/NNSA) appreciates the opportunity to review the Defense Nuclear Facilities Safety Board (DNFSB) Draft Recommendation 2019-1, Safety of the Savannah River Site Tritium Facilities. DOE/NNSA is fully committed to ensuring continued safe operations of all our facilities and providing assurance of adequate protection of our workers, the environment, and the public. DOE/NNSA believes that ongoing actions at the Tritium Facilities at the Savannah River Site (SRS) adequately address DNFSB concerns outlined in your Draft Recommendation, and make the need for additional actions in response to a DNFSB Recommendation unnecessary. The commitment to safety in the Tritium Facilities has not wavered, and there has been no change in the safety philosophy in the Tritium Facilities.

As noted in the Draft Recommendation, DOE/NNSA committed in 2011 to develop a new analytical model for dose consequences for SRS. In 2011, DOE/NNSA outlined a plan to update the atmospheric dispersion model, which was completed in 2014. Implementation of that new analysis began shortly thereafter and included a review of the safety controls selection and hierarchy. DOE/NNSA decided to combine all of the Tritium Facilities' safety bases and to conduct a holistic revision to the Documented Safety Analysis (DSA). The new analysis placed additional emphasis on passive and engineered controls over administrative and programmatic controls. The new combined DSA was submitted to DOE/NNSA in July 2017. After an exhaustive review, significant changes were identified, including development of a formal strategy that will continue to strengthen the controls available to protect collocated workers from large energetic events postulated by the safety analysis. The DOE/NNSA DSA review also generated hundreds of additional comments to be addressed in the DSA resubmittal, which was delivered to DOE/NNSA in November 2018. Subject matter experts from across DOE and NNSA are completing a review of the resubmitted DSA and have generated a number of additional items requiring further action. The new analysis continues to conservatively demonstrate that, even for a full facility release, the dose consequences to the public remain below the evaluation guideline. Action items addressed in the collocated worker risk reduction strategy have been placed in a commitment schedule submitted to DOE/NNSA and are being actively managed.

The Department believes that actions contained in the Draft Recommendation 2019-1 are already in place or in development to continue the improvements to provide adequate protection of Tritium Facilities workers, the environment, and the public. The current Tritium Facilities DSA contains appropriate safety significant controls and the new analysis, when implemented, will only strengthen that safety posture. Considering the on-going work, the Draft Recommendation would not drive the need for any additional actions. Additionally, resources needed to respond to a DNFSB recommendation would divert those critical resources that are needed to continue the improvements underway to ensure safety of the collocated workers and/or the public.

We appreciate the Board's perspectives and look forward to continued positive interactions with you and your staff. If you have any questions, please contact Ms. Nicole Nelson-Jean, Manager of the Savannah River Field Office, at (803) 208-3689.

Sincerely,
Lisa E. Gordon-Hagerty
Enclosure

Enclosure—Comments on DNFSB Draft Recommendation 2019–1

Safety of the Savannah River Site Tritium Facilities

Over the past several years, the Department of Energy's National Nuclear Security Administration (DOE/NNSA) and the Savannah River Site (SRS) Management and Operating contractor, Savannah River Nuclear Solutions (SRNS), have taken actions to improve the Tritium Facilities safety posture. A new hazards analysis has been conducted along with a revision to the Documented Safety Analysis (DSA). This new analysis has further emphasized identifying passive and engineered controls over administrative and programmatic controls. The Board's technical staff was recently provided a draft of the new DSA. DOE/NNSA has reviewed the documents and provided the contractor with comments along with comments from a separate review

team from the DOE's Office of Enterprise Assessments. After the review teams' comments are resolved, the new DSA will be approved, which is anticipated to occur in 2019.

As noted in the Draft Recommendation, the new DSA includes updated dose consequence calculations. The calculations use a bounding Material at Risk (MAR) and default to extremely conservative factors, such as 100 percent tritium oxide conversion, a ground plume release, and structural failures during a seismic event. Although MAR reductions have been implemented, further reductions listed in the DSA would raise the security classification of the documents. However, even with the extreme conservatism in the parameters selected, including a simultaneous release of all the tritium, from all the multiple facilities within 20 minutes as a ground plume; the postulated consequences to the public remain below the Evaluation Guideline of DOE–STD–3009–94, Preparation Guide for US. Department of Energy Nonreactor Nuclear Facility Documented Safety Analyses. In addition, the modeling does not account for any Emergency Response actions, personnel self-protection actions, nor any subsequent response actions to mitigate the consequences. Based on the current DSA, and the new DSA in review, the risk to the public remains low.

The new DSA postulates a small set of energetic events that rely on credited Specific Administrative Controls (SAC) that perform preventive functions. Seismic events in the Tritium Facilities present another challenge as some legacy buildings remain in service while the Tritium Finishing Facility capital line item project establishes a modem, safe, and secure replacement to the H-Area Old Manufacturing Facility. The new DSA includes a number of new credited features, for example:

- The 217–H Vault walls and fire damper have been upgraded and are now designated as Safety Class (SC) features that prevent a release of MAR from the building. Other passive fire barriers are also credited.
- New SACs for fire water tank volume verification and other new Fire Suppression Surveillances have been added.
- All current Programmatic Controls have been replaced by at least one SAC.
- Additional analyses are planned for other buildings and Systems, Structures, and Components (SSCs) to determine suitability for upgrading the functional classification.
- In 2018, DOE/NNSA requested and received from SRNS, a strategy for risk reduction to the collocated worker (U–ESR–H–00163, Rev.0). This strategy describes the SRNS plans for additional structural analyses and control development for the remaining facilities during a potential seismic event. It also includes analytical analysis for dose reduction (*e.g.* tritium oxidation conversion rates and plume rise phenomena). In the aggregate, the plan includes 19 commitments that are being pursued and managed (SRNS–T0000–2018–00227, Transmittal of the Schedule for Implementing the Strategy for Risk Reduction to the Co-Located Worker in Tritium Facilities).
- Longer term plans include the Tritium Finishing Facility capital line item project, to replace the H-Area Old Manufacturing (HAOM) facility with a seismically qualified facility with a dedicated SC fire suppression system.

As noted in the Draft Recommendation, SRS has worked hard to improve its Emergency Preparedness (EP) program. The current EP program provides the appropriate training required for individuals to respond to alarms, abnormal operations, and emergencies across SRS. The Tritium Facilities EP program maintains a fully qualified team that performs approximately 50 drills per year to train and validate the organization's ability to respond to various scenarios, from weather induced incidents to large energetic events. DOE/NNSA is confident that appropriate drills are conducted for events as required by DOE.

Safety Posture

The Draft Recommendation discusses the control set from the 1990s as being eliminated or downgraded and this result is a perceived shift in safety philosophy in managing the Tritium Facilities safety posture. DOE/NNSA assures the DNFSB that there has not been a shift in the safety philosophy, but rather changes in operations and new hazards analysis techniques have driven a change in the control strategy. Larger and more complex full facility events are now postulated in the safety analysis that rendered previous administrative individual tank Limiting Condition for Operations of the past less effective. Operational events have an adequate set of controls identified, whether SSCs or administrative. Several other controls mentioned in the draft recommendation include the Highly Invulnerable Encased Safes (HIVES), ventilation systems, and the seismic detection and isolation system. The HIVES continue to be credited as safety significant to protect reservoirs in a seismic event and the ventilation systems and seismic confinement system are designated as formal Defense-in-Depth/Important to Safety (DID/ITS). DID/ITS systems are listed in the current DSA with a safety function, are controlled by the Unreviewed Safety Question (USQ) process and cannot be eliminated without DOE/NNSA approval. It was determined that these systems currently cannot be qualified as safety significant without further analysis and upgrade. Part of the risk reduction strategy is to analyze various buildings and SSCs for seismic qualification, with the goal of determining the effort needed to upgrade the seismic detection and isolation system and ventilation system to safety significant controls if necessary. The plan will also evaluate the need for installing seismic detection and isolation systems on additional equipment in H-Area New Manufacturing (HANM) facility and the Tritium Extraction Facility (TEF).

The Savannah River Field Office (SRFO) is routinely involved in the development and review of documents supporting the basis of the DSA. SRFO safety engineers attend and provide comment on a number of development safety programs, such as the Consolidated Hazards Analysis Process, Facility Operations Safety Committee, and DSA/Technical Safety Requirements (TSR) development meetings.

The hazards analysis for the new DSA has a small number of scenarios that rely on credited SACs that perform preventive functions. These scenarios can be categorized into four groups:

- Process explosion—There are two events in HANM and two in TEF that conservatively involve one or two process tanks. This would be caused by an inadvertent introduction of oxygen into the system or inadvertent movement of tritium. Although many SSCs provide a defense in depth function (*e.g.,* inerted gas glovebox confinement, ventilation, tritium air monitors, etc.), the hazard analysis team did not feel these SSCs would fully mitigate or prevent the events. Therefore, specific administrative controls are specified to prevent the event.
- Firearms discharge—There is an inadvertent firearms discharge scenario. Tritium air monitors are credited to alert personnel of a release if an inadvertent firearm discharge were to cause a confinement breech. DOE/NNSA requires security personnel to routinely access the facilities and they are trained on proper response.
- External impacts—These events include vehicle crashes, crane drops,

and airplane crashes. Events for the vehicle crashes and crane drops have specific administrative controls credited to minimize the potential for these events.

• Seismic event—These events may also include fires. The 217–H vault walls, fire damper and other fire barriers are new SC controls that will be added in the DSA update. DOE/NNSA recognizes that additional controls are desired for these events and are currently working through similar DSA review team comments with SRNS. Additionally, the risk reduction strategy places emphasis on qualifying and developing controls for seismic events. The strategy takes a multi prong approach to include evaluating the feasibility of upgrading current DID/ITS controls and evaluating an alternate fire suppression system.

Emergency Preparedness

SRS EP support organizations, like the SRS Fire Department, are trained and routinely evaluated to ensure that they can properly respond to an event in any facility across the site. For example, during the 2018 Site Exercise, the SRS emergency response team responded to a complex multi-facility and multi-contractor event that included H-Area, Tritium, and H-Tank Farm. Site level evaluated exercises routinely involve multiple local, county, state, and federal agencies in the response efforts. In a trend to further challenge all organizations, the 2018 exercise tested the site's Emergency Response Organization (ERO) ability to manage a complex event with potential off-site consequences, the Area Emergency Coordinators ability to manage multiple issues within an impacted area, and the ERO's ability to manage these issues along with the balance of the site to protect onsite employees and the public. SRS has addressed several opportunities for improvement identified in the exercise that included logistical challenges in the movement of personnel from impacted areas and conducting appropriately scoped drills to validate the emergency response effectiveness. DOE/NNSA believes that drills conducted by SRNS are properly scoped and use valid assumptions pertaining to the facility processes and safety systems.

As noted, the SRS and Tritium Facilities EP programs have made significant improvements over the past several years. The EP programs are adequate to continue protecting the SRS workers and the surrounding public.

Postulated Dose Consequences

Attachment B of the DNFSB Draft Recommendation 2019–1 discusses the postulated high worker doses documented in the DSA and the corresponding potential health consequences. DOE standards require that nuclear facilities perform conservative accident analyses. The tritium analysis is very conservative and uses many bounding assumptions (e.g.; MAR, 100 percent oxide conversion, ground level release, and others). Per DOE–STD–3009–94, this conservative analysis is used to quantify the ''theoretical'' dose consequences to (1) determine if any SC SSC is required and (2) provide insight for selecting the appropriate SC SSC(s) for each design basis accident scenario. This analysis was never intended to calculate predicted or expected accident consequences for collocated workers or members of the public. Doses of this magnitude are not expected for any event. In fact, a best estimate determination by SRNS for a full tritium fire event conservatively indicates a postulated exposure reduction factor of over 25 from what is listed in the DSA (S–ESR–H–00031, Rev. 0). This best estimate used the bounding MAR and did not factor in the effects of plume rise that would exist from a large fire. Additionally, the MAR in the Tritium Facilities is spread out over multiple facilities and mostly contained in various storage vessels (some robust) in gas form and on hydride beds. It would not be expected that 100 percent of the MAR would be released in any event and all within a 20-minute timeframe. The Savannah River Emergency Protection Program is well prepared to protect the workers in the very unlikely occurrence of a large-scale event at the Tritium Facilities.

(Authority: 42 U.S.C. 2286d(b)(2))

Dated: June 13, 2019.

Joyce L. Connery,

Acting Chairman.

[FR Doc. 2019–12918 Filed 6–18–19; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Statewide Longitudinal Data Systems

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The Institute of Education Sciences (IES) invites State educational agencies (SEAs) to apply for fiscal year (FY) 2019 grants to assist them in using data in Statewide Longitudinal Data Systems (SLDS) to inform their efforts to improve education in critical areas, Catalog of Federal Domestic Assistance (CFDA) number 84.372A. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: June 26, 2019.

Deadline for Notice of Intent to Apply: July 19, 2019.

Deadline for Transmittal of Applications: September 17, 2019.

Pre-Application Webinar Information: We intend to hold webinars designed to provide technical assistance to interested applicants. Detailed information regarding these meetings will be provided on the IES website at *http://ies.ed.gov/funding.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FY 3768) and available at *https://www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Nancy Sharkey, U.S. Department of Education, 400 Maryland Avenue SW, Room 4162, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7689. Email: *nancy.sharkey@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SLDS program awards grants to SEAs to design, develop, and implement statewide longitudinal data systems to efficiently and accurately manage, analyze, disaggregate, and use individual student data. The Department's long-term goal in operating the program is to help all States create comprehensive P–20W (early learning through workforce) systems that foster the generation and use of accurate and timely data, support analysis and informed decision-making at all levels of the education system, increase the efficiency with which data may be analyzed to support the continuous improvement of education services and outcomes, facilitate research to improve student academic

achievement and close achievement gaps, support education accountability systems, and simplify the processes used by SEAs to make education data transparent through Federal and public reporting.

Under previous competitions, IES awarded SLDS grants to 47 States, the District of Columbia, Puerto Rico, the Virgin Islands, and American Samoa. These funds supported SLDS grantees in the design, development, and implementation of statewide longitudinal kindergarten through grade 12 (K–12) data systems, or to expand their K–12 systems to include early childhood data and/or postsecondary and workforce data. Grants awarded also supported the development and implementation of systems that link individual student data across time and across databases, including the matching of teachers to students; promoting interoperability across institutions, agencies, and States; and protecting student and individual privacy consistent with applicable privacy protection laws.

Priorities: Because States have been engaged in the process of developing these longitudinal data systems for a number of years, two of the priorities of this competition focus on using data that have already been linked or managed in State data systems. However, recognizing that infrastructure conceived more than a decade ago may be increasingly obsolete, States may also apply for infrastructure grants in this round.

Applicants may apply for funds to carry out projects to address one of the following priorities for development and use of an SLDS:

(1) Infrastructure;

(2) Education Choice; or

(3) Equity.

Under any of these priorities, States should consider how their proposals would enhance their ability to use their SLDS to address the needs of at-risk students, including children and youth who are or have been homeless or in the child welfare or juvenile justice systems. All applicants may also apply for funds to assist the Department in testing a proposed school-level poverty measure that is based on student addresses instead of participation in free and reduced-price meals. States participating in this activity would always be in control of the geocoded student address directory that they create, and no individual student data will be shared with the Department.

SEAs for each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas are eligible to apply for funding under this competition. Grants will not be made available to support ongoing maintenance of current data systems, but they may be used to improve existing systems to make more effective use of the data contained in these statewide systems, or to create a system where none previously existed, or a linkage that did not already exist.

Exemption from Rulemaking: Under section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581 IES is not subject to section 43(d) of the General Education Provisions Act, 20 U.S.C 1232(d), and is therefore not required to offer interested parties the opportunity to comment on priorities, selection criteria, definitions, and requirements.

Program Authority: 20 U.S.C. 9607.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 77, 82, 84, 97, 98, and 99. (b) 34 CFR part 75, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)–(c), 75.219, 75.220, 75.221, 75.222, and 75.230. (c) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $26,132,000 to support the first year of grant funding.

Estimated Range of Awards: $3,250,000 to $3,500,000 for the entire project period of 48 months.

Maximum Award: We will not make an award exceeding $3,250,000 for the entire project period of 48 months to address one of the priorities. States that agree to participate in the School-Level Poverty project may request an additional $250,000 for costs associated with the school-level poverty measure development and test work for a project period of no more than 48 months.

Note: The Director of IES may change the maximum award through a notice published in the **Federal Register**.

Estimated Number of Awards: We estimate making approximately 30 awards. The number of awards made under this competition will depend upon the quality of the applications received and the level of funding requested.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants are limited to SEAs. An SEA is the agency primarily responsible for the State supervision of elementary schools and secondary schools. See 20 U.S.C. 9601 (which incorporates by reference the definition of SEA set out in section 9101 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 7801). The SEAs of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are eligible.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* The Educational Technical Assistance Act of 2002 requires that funds made available under this grant program be used to supplement, and not supplant, other State or local funds used for developing or using State data systems.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019, and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

Additional information regarding program requirements for this competition will be contained in the Request for Applications (RFA), which will be available on June 19, 2019, on the IES website at: *https://ies.ed.gov/funding/.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the SLDS grant program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you

may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Notice of Intent to Apply:* We ask potential applicants to submit a letter of intent, indicating the priority under which the State intends to apply for funding. We use the information in the letters of intent to identify the expertise needed for the scientific review panels and to secure a sufficient number of reviewers. For this reason, letters of intent are optional but strongly encouraged. We request that letters of intent be submitted using the link at: *https://iesreview.ed.gov/.* Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* For all of its grant competitions, IES uses selection criteria based on a peer-review process that has been approved by the National Board for Education Sciences. The Peer Review Procedures for Grant Applications can be found on the IES website at: *https://ies.ed.gov/director/sro/peer_review/application_review.asp.* For this competition, peer reviewers will be asked to evaluate the substantial need for the project; the quality and feasibility of its measurable outcomes, activities, and timelines; the effectiveness of its management and governance plan; the quality of its data security and privacy protections; the qualifications and experience of the personnel; and the resources of the applicant to support the proposed activities. These criteria are described in greater detail in the RFA.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure

information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* To evaluate the overall success of this program, the Department has established three performance measures that assess progress toward our strategic goal of ensuring that data are available to inform education decisions by supporting States' development and implementation of statewide longitudinal data systems. The Department measures: (1) The number of States that link K–12 data with early childhood data; (2) the number of States that link K–12 data with postsecondary data; and (3) the number of States that link K–12 and postsecondary data with workforce data. In addition, grantees will be expected to report in their annual and final performance reports on their progress in achieving the project objectives proposed in their grant applications and on the status of their development and implementation of a statewide longitudinal data system.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schneider,

Director, Institute of Education Sciences.

[FR Doc. 2019–13038 Filed 6–18–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Strengthening Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2019 for the Strengthening Institutions Program (SIP), Catalog of Federal Domestic Assistance (CFDA) number 84.031A. This notice relates to the approved information collection under OMB control number 1840–0114.

DATES:

Applications Available: June 19, 2019.

Deadline for Transmittal of Applications: July 19, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Nalini Lamba-Nieves, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–34, Washington, DC 20202–4260. Telephone: (202) 453–7953. *Email: Nalini.Lamba.Nieves@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Strengthening Institutions Program (SIP) provides grants to eligible institutions of higher education (IHEs) to help them become self-sufficient and expand their capacity to serve low-income students by providing funds to improve and strengthen the institution's academic quality, institutional management, and fiscal stability.

Priorities: This notice contains two competitive preference priorities and one invitational priority. The competitive preference priorities are from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (83 FR 9096) (Supplemental Priorities), which were published in the **Federal Register** on March 2, 2018.

Competitive Preference Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional six points to an application that meets these priorities.

These priorities are:

Competitive Preference Priority 1—Fostering Flexible and Affordable Paths to Obtaining Knowledge and Skills (4 points).

Projects that are designed to address providing work-based learning experiences (such as internships, apprenticeships, and fellowships) that align with in-demand industry sectors or occupations (as defined in section 3(23) of the Workforce Innovation and Opportunity Act of 2014).

Competitive Preference Priority 2—Fostering Knowledge and Promoting the Development of Skills that Prepare Students to be Informed, Thoughtful, and Productive Individuals and Citizens (2 points).

Projects that are designed to address supporting instruction in personal financial literacy, knowledge of markets and economics, knowledge of higher education financing and repayment (*e.g.,* college savings and student loans), or other skills aimed at building personal financial understanding and responsibility.

Invitational Priority: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this

invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority—Spurring Investment in Opportunity Zones.

Under this priority, an applicant may address one or both of the following priority areas:

(1) Propose to serve children or students who reside, or attend elementary or secondary schools or institutions of higher education, in a qualified opportunity zone as designated by the Secretary of the Treasury under section 1400Z–1 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act (Pub. L. 115–97). In addressing this priority, an applicant must provide the census tract number of the qualified opportunity zone for which it proposes to serve children or students. A list of qualified opportunity zones, with census tract numbers, is available at *www.cdfifund.gov/Pages/Opportunity-Zones.aspx.*

(2) Provide evidence in its application that it has received or will receive financial assistance from a qualified opportunity fund under section 1400Z–2 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act, for a purpose directly related to its proposed project. In addressing this priority, an applicant must identify the qualified opportunity fund from which it has received or will receive financial assistance.

Definitions: These definitions apply to the priorities and the selection criteria for this competition and are from section 3(23) of the Workforce Innovation and Opportunity Act of 2014 and from 34 CFR 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

In-demand industry sector or occupation means—

(a) *In General.*— (i) An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or

(ii) An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

(B) *Determination.* The determination of whether an industry sector or occupation is in-demand under this paragraph shall be made by the State board or local board, as appropriate, using State and regional business and labor market projections, including the use of labor market information.

Logic model (also referred to as theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp,* to help design their logic models. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Program Authority: 20 U.S.C. 1057–1059d (title III, part A, of the Higher Education Act of 1965, as amended (HEA)).

Note: In 2008, the HEA was amended by the Higher Education Opportunity Act of 2008 (HEOA), Public Law 110–315. The HEOA made a number of technical and substantive revisions to SIP. Please note that the regulations for SIP in 34 CFR part 607 have not been updated to reflect these statutory changes.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 607. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development Grants and Cooperative Arrangement Development Grants will be awarded in FY 2019.

Estimated Available Funds: Approximately $26,300,000 is available for new awards in the program competition.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Individual Development Grants:

Estimated Range of Awards: $400,000–$450,000 per year.

Estimated Average Size of Awards: $425,000 per year.

Maximum Award: We will not make an award exceeding $450,000 for a single budget period of 12 months.

Estimated Number of Awards: 31.

Cooperative Arrangement Development Grants:

Estimated Range of Awards: $500,000–$550,000 per year.

Estimated Average Size of Awards: $525,000 per year.

Maximum Award: We will not make an award exceeding $550,000 for a single budget period of 12 months.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* This program is authorized by title III, part A, of the HEA. To qualify as an eligible institution under any title III, part A program, an institution must—

(a) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(b) Be legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree;

(c) Be designated as an ''eligible institution'' by demonstrating that it: (1) Has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: The notice announcing the FY 2019 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on January 29, 2019 (84 FR 451). Only institutions that the Department determines are eligible, or are granted a waiver under the process described in that notice, may apply for a grant in this program.

Relationship Between the Title III, Part A Programs and the Developing Hispanic-Serving Institutions (HSI) Program

A grantee under the HSI program, which is authorized under title V of the HEA, may not receive a grant under any HEA, title III, part A program. The title III, part A programs are: SIP; the Tribally Controlled Colleges and Universities program; the Alaska Native and Native Hawaiian-Serving Institutions program; the Asian American and Native American Pacific Islander-Serving Institutions program; and the Native American-Serving Nontribal Institutions program. Furthermore, a current HSI program grantee may not give up its HSI grant to receive a grant under SIP or any title III, Part A program as described in 34 CFR 607.2(g)(1).

An eligible HSI that is not a current grantee under the HSI program may apply for a FY 2019 grant under all title III, part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant as described in 34 CFR 607.2(g)(1).

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1057(d)–(2)).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2019.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 607.10(c). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit the application narrative to no more than 50 pages for Individual Development Grants and no more than 65 pages for Cooperative Arrangement Development Grants. If you are addressing the invitational priority and/or either or both competitive preference priorities, you will have an additional seven pages total to respond to all three priorities. To address the invitational priority, you will have an additional two pages; for competitive preference priority one, you will have three additional pages; and for competitive preference priority two, you will have two additional pages. If you address all three priorities, you should limit the application narrative (Part III) to no more than 57 pages for the Individual Development Grant application and 72 pages for the Cooperative Arrangement Development Grant application. Please include a separate heading when responding to the invitational priority and one or both competitive preference priorities. You may only use the additional seven pages to address the invitational or the competitive preference priorities. The additional seven pages are not for an extended response to the selection criteria. If you are not addressing the invitational priority or the competitive preference priorities, you should limit your application narrative to no more than 50 pages for the Individual Development Grant or 65 pages for the Cooperative Arrangement Development Grant. We also recommend that you use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, excluding titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract and the bibliography. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 607.22(a) through (g), and from 34 CFR 75.210. Applicants should address each of the following selection criteria separately for each proposed activity. The selection criteria are worth a total of 100 points; the maximum score for each criterion is noted in parentheses.

(a) *Quality of the Applicant's Comprehensive Development Plan.* (Maximum 20 Points) The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution;

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis;

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution; and

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources.

(b) *Quality of the Project Design.* (Maximum 10 Points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project demonstrates a rationale (as defined in this notice).

(c) *Quality of Activity Objectives.* (Maximum 15 Points) The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan.

(d) *Quality of Implementation Strategy.* (Maximum 15 Points) The extent to which—

(1) The implementation strategy for each activity is comprehensive;

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects; and

(3) The timetable for each activity is realistic and likely to be attained.

(e) *Quality of Key Personnel.* (Maximum 8 Points) The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives; and

(2) The time commitment of key personnel is realistic.

(f) *Quality of Project Management Plan.* (Maximum 10 Points) The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation; and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer.

(g) *Quality of Evaluation Plan.* (Maximum 15 Points) The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan; and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan.

(h) *Budget.* (Maximum 7 Points) The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria listed in this notice from 34 CFR 607.22(a) through (g) and 34 CFR 75.210. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review and from the two competitive preference priorities.

Tie-breaker for Development Grants. In tie-breaking situations for development grants, in accordance with 20 U.S.C. 1057(b), we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable type institutions that offer similar instruction. We award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities such as libraries and laboratories; and

(6) Student services, including services that will assist in the education of special populations.

For the purpose of these funding considerations, we use 2017–2018 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given to applicants that have the lowest endowment values per FTE enrolled student.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant

plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of SIP:

(a) The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at SIP institutions. Note that this is a long-term measure that will be used to periodically gauge performance.

(b) The percentage of first-time, full-time degree-seeking undergraduate students at four-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution.

(c) The percentage of first-time, full-time degree-seeking undergraduate students at two-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution.

(d) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year SIP institutions graduating within six years of enrollment.

(e) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year SIP institutions graduating within three years of enrollment.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to one of the persons 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 the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced feature at this site, you can limit your search to documents published by the Department.

Dated: June 14, 2019.

Diane Auer Jones,

Principal Deputy Under Secretary, Delegated to Perform the Duties of Under Secretary and Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2019–13010 Filed 6–18–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Research and Special Education Research Grant Programs

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2020 for the Education Research and Special Education Research Grant Programs, Catalog of Federal Domestic Assistance (CFDA) numbers 84.305A, 84.305B, 84.305C, 84.305D, 84.305R, 84.324A, 84.324B, and 84.324R. This notice relates to the approved information collection under OMB control number 4040–0001.

DATES: The dates when applications are available and the deadlines for transmittal of applications invited under this notice are indicated in the chart at the end of this notice and in the

Requests for Applications (RFAs) that are posted at the following websites: *https://ies.ed.gov/funding, www.ed.gov/programs/edresearch/index.html,* and *www.ed.gov/programs/specialedresearch/index.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular research competition is listed in the chart at the end of this notice, as well as in the relevant RFA and application package.

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: In awarding these grants, the Institute of Education Sciences (Institute) intends to provide national leadership in expanding knowledge and understanding of (1) developmental and school readiness outcomes for infants and toddlers with or at risk for a disability, (2) education outcomes for all learners from early childhood education through postsecondary and adult education, and (3) employment and wage outcomes when relevant (such as for those engaged in career and technical, postsecondary, or adult education). The Institute's research grant programs are designed to provide interested individuals and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all learners. These interested individuals include parents, educators, learners, researchers, and policymakers. In carrying out its grant programs, the Institute provides support for programs of research in areas of demonstrated national need.

Competitions in This Notice: The Institute will conduct eight research competitions in FY 2020 through two of its centers:

The Institute's National Center for Education Research (NCER) will hold a total of five competitions—one competition in each of the following areas: Education research; education research training; education research and development centers; statistical and research methodology in education; and systematic replication in education.

The Institute's National Center for Special Education Research (NCSER) will hold a total of three competitions—one competition in each of the following areas: Special education research; special education research training, and systematic replication in special education.

NCER Competitions

The Education Research Competition. Under this competition, NCER will consider only applications that address one of the following topics:

- Career and Technical Education.
- Cognition and Student Learning.
- Early Learning Programs and Policies.
- Education Technology.
- Effective Instruction.
- English Learners.
- Improving Education Systems.
- Postsecondary and Adult Education.
- Reading and Writing.
- Science, Technology, Engineering, and Mathematics (STEM) Education.
- Social and Behavioral Context for Academic Learning.

The Research Training Programs in the Education Sciences Competition. Under this competition, NCER will consider only applications that address one of the following topics:

- Predoctoral Interdisciplinary Research Training Program in the Education Sciences.
- Postdoctoral Research Training Program in the Education Sciences.
- Methods Training for Education Researchers.

The Education Research and Development Centers Competition. Under this competition, NCER will consider only applications that address one of the following topics:

- Improving Opportunities and Achievement for English Learners in Secondary School Settings.
- Improving Teaching and Learning in Postsecondary Institutions.
- Improving Access, Instruction, and Outcomes in Gifted Education.

The Statistical and Research Methodology in Education Competition. Under this competition, NCER will consider only applications that address one of the following topics:

- Statistical and Research Methodology Grants.
- Early Career Statistical and Research Methodology Grants.

Research Grants Focused on Systematic Replication. Under this competition, NCER will consider only applications that address identifying what works in education through systematic replication. The list of interventions identified for replication is available on the IES website at: *https://ies.ed.gov/director/remarks/4-15-2019.asp.*

NCSER Competitions

The Special Education Research Competition. Under this competition, NCSER will consider only applications that address one of the following topics:

- Autism Spectrum Disorders.
- Cognition and Student Learning in Special Education.
- Early Intervention and Early Learning in Special Education.
- Families of Children with Disabilities.
- Professional Development for Educators and School-Based Service Providers.
- Reading, Writing, and Language Development.
- Science, Technology, Engineering, and Mathematics (STEM) Education.
- Social and Behavioral Outcomes to Support Learning.
- Special Education Policy, Finance, and Systems.
- Technology for Special Education.
- Transition Outcomes for Secondary Students with Disabilities.
- Special Topics, which include—
- Career and Technical Education for Students with Disabilities.
- English Learners with Disabilities.
- Systems-Involved Students with Disabilities.

The Research Training Programs in Special Education Competition. Under this competition, NCSER will consider only applications that address one of the following three topics:

- Postdoctoral Research Training Program in Special Education and Early Intervention.
- Early Career Development and Mentoring.
- Methods Training Using Single Case Designs.

Research Grants Focused on Systematic Replication. Under this competition, NCSER will consider only applications that address identifying what works in special education through systematic replication. The list of interventions identified for replication is available on the IES website at: *https://ies.ed.gov/director/remarks/4-15-2019.asp.*

Exemption from Proposed Rulemaking: Under section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, IES is not subject to section 437(d) of the General Education Provisions Act, 20 U.S.C. 1232(d), and

is therefore not required to offer interested parties the opportunity to comment on priorities, selection criteria, definitions, and requirements.

Program Authority: 20 U.S.C. 9501 *et seq.*

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 77, 81, 82, 84, 86, 97, 98, and 99. In addition, the regulations in 34 CFR part 75 are applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)–(c), 75.219, 75.220, 75.221, 75.222, 75.230, and 75.708. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply for this competition.

II. Award Information

Types of Awards: Discretionary grants and cooperative agreements.

Fiscal Information: Although Congress has not yet enacted an appropriation for FY 2020, the Institute is inviting applications for these competitions now so that applicants can have adequate time to prepare their applications. The actual level of funding, if any, depends on final congressional action. The Department may announce additional competitions later in 2019. The actual award of grants will depend on the availability of funds.

The Education Research and Development Center for Improving Access, Instruction and Outcomes in Gifted Education would be supported with funding authorized through the Jacob K. Javits Gifted and Talented Students Education Act. The Administration's budget request for FY 2020 does not include funds for the Javits program. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: See chart at the end of this notice.

Estimated Size and Number of Awards: The size of the awards will depend on the scope of the projects proposed. The number of awards made under each competition will depend on the quality of the applications received for that competition, the availability of funds, and the following limits on awards for specific competitions and topics set by the Institute. See the chart at the end of this notice for additional information.

The Institute may waive any of the following limits on awards for a specific competition or topic in the special case that the peer review process results in a tie between two or more grant applications, making it impossible to adhere to the limits without funding only some of the equally ranked applications. In that case, the Institute may make a larger number of awards to include all applications of the same rank.

For NCER's Education Research and Development Center competition, we intend to fund one grant under each of the three topics.

For NCER's Research Training Programs in the Education Sciences competition, we intend to fund five grants under the Predoctoral Interdisciplinary Research Training Program in the Education Sciences topic. However, should funding be available, we may consider making additional awards to high-quality applications that remain unfunded after five awards are made.

For NCSER's Research Training Programs in Special Education competition, we intend to fund no more than one grant for Methods Training Using Single Case Designs.

Contingent on the availability of funds and the quality of applications, we may make additional awards in FY 2021 from the list of highly-rated unfunded applications from the FY 2020 competitions.

Note: The Department is not bound by any estimates in this notice.

Project Period: See chart at the end of this notice.

III. Eligibility Information

1. *Eligible Applicants:* Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, nonprofit and for-profit organizations and public and private agencies and institutions of higher education, such as colleges and universities.

2. *Cost Sharing or Matching:* These programs do not require cost sharing or matching.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: Nonprofit and for-profit organizations and public and private agencies and institutions of higher education. The grantee may award subgrants to entities it has identified in an approved application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Other Information:* Information regarding program and application requirements for the competitions will be contained in the NCER and NCSER RFAs, which will be available on or before June 24, 2019, on the Institute's website at: *https://ies.ed.gov/funding/.* The dates on which the application packages for these competitions will be available are indicated in the chart at the end of this notice.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application are contained in the RFA for the specific competition. The forms that must be submitted are in the application package for the specific competition.

4. *Submission Dates and Times:* The deadline date for transmittal of applications for each competition is indicated in the chart at the end of this notice and in the RFAs for the competitions.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review:* These competitions are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

V. Application Review Information

1. *Selection Criteria:* For all of its grant competitions, the Institute uses selection criteria based on a peer-review process that has been approved by the National Board for Education Sciences. The Peer Review Procedures for Grant

Applications can be found on the Institute's website at *https://ies.ed.gov/director/sro/peer_review/application_review.asp.*

For the 84.305A, 84.305D, 84.324A, 84.305R, and 84.324R competitions, peer reviewers will be asked to evaluate the significance of the application, the quality of the research plan, the qualifications and experience of the personnel, and the resources of the applicant to support the proposed activities. These criteria are described in greater detail in the RFAs.

For the 84.305B and 84.324B competitions, peer reviewers for the predoctoral, postdoctoral, and methods training programs will be asked to evaluate the significance of the application, the quality of the research training plan, the qualifications and experience of the personnel, and the resources of the applicant to support the proposed activities. Peer reviewers for the early career development and mentoring program will be asked to evaluate the significance of the application, the quality of the research plan, the quality of the career development plan, the qualifications and experience of the personnel, and the resources of the applicant to support the proposed activities. These criteria are described in greater detail in the RFA.

For the 84.305C competition, peer reviewers will be asked to evaluate the significance of the application, the quality of the research plan for the focused program of research, the quality of the plans for other center activities, the quality of the management and institutional resources, and the qualifications and experience of the personnel. These criteria are described in greater detail in the RFA.

For all of the Institute's competitions, applications should include budgets no higher than the relevant maximum award as set out in the relevant RFA. The Institute will not make an award exceeding the maximum award amount as set out in the relevant RFA.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Institute may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Institute may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Institute also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under these competitions, the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Institute may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for an annual two-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* (a) If you apply for a grant under one of the competitions announced in this notice, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Institute. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Institute under 34 CFR 75.118. The Institute may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* To evaluate the overall success of its education research and special education research grant programs, the Institute annually assesses the percentage of projects that result in peer-reviewed publications and the number of Institute-supported interventions with evidence of efficacy in improving learner education outcomes. In addition, NCSER annually assesses the number of newly developed or modified interventions with evidence of promise for improving learner education outcomes. School readiness outcomes include pre-reading, reading, pre-writing, early mathematics, early science, and social-emotional skills that prepare young children for school. Student academic outcomes include learning and achievement in academic content areas, such as reading, writing,

math, and science, as well as outcomes that reflect students' successful progression through the education system, such as course and grade completion; high school graduation; and postsecondary enrollment, progress, and completion. Social and behavioral competencies include social and emotional skills, attitudes, and behaviors that are important to academic and post-academic success. Additional education outcomes for students with or at risk of a disability (as defined in the relevant RFA) include developmental outcomes for infants and toddlers (birth to age three) pertaining to cognitive, communicative, linguistic, social, emotional, adaptive, functional, or physical development; and developmental and functional outcomes that improve education outcomes, transition to employment, independent living, and postsecondary education for students with disabilities.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Institute considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Institute has established performance measurement requirements, whether the grantee has met the performance targets in the grantee's approved application.

In making a continuation award, the Institute also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the RFA in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the appropriate program contact person listed in the chart at the end of this notice.

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

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schneider,

Director, Institute of Education Sciences.

CFDA No. and name	Application package available	Deadline for transmittal of applications	Estimated range of awards *	Project period	For further information contact
National Center for Education Research (NCER)					
84.305A Education Research ▪ Career and Technical Education ▪ Cognition and Student Learning. ▪ Early Learning Programs and Policies. ▪ Education Technology. ▪ Effective Instruction. ▪ English Learners. ▪ Improving Education Systems. ▪ Postsecondary and Adult Education. ▪ Reading and Writing. ▪ Science, Technology, Engineering, and Mathematics Education. ▪ Social and Behavioral Context for Academic Learning.	7/11/19	8/29/19	$100,000 to $660,000	Up to 5 years	Erin Higgins, *Erin.Higgins@ed.gov.*
84.305B Research Training Programs in the Education Sciences ▪ Predoctoral Interdisciplinary Research Training Program in the Education Sciences ▪ Postdoctoral Research Training Program in the Education Sciences. ▪ Methods Training for Education Researchers.	7/11/19	8/29/19	$100,000 to $920,000	Up to 5 years	Katina Stapleton, *Katina.Stapleton@ed.gov.*
84.305C Education Research and Development Centers ▪ Improving Opportunities and Achievement for English Learners in Secondary School Settings ▪ Improving Teaching and Learning in Postsecondary Institutions. ▪ Improving Access, Instruction and Outcomes in Gifted Education..	7/11/19	9/26/19	$1,000,000 to $2,000,000	Up to 5 years	Corinne Alfeld, *Corinne.Alfeld,@ed.gov.*
84.305D Statistical and Research Methodology in Education ▪ Statistical and Research Methodology Grants ▪ Early Career Statistical and Research Methodology Grants.	7/11/19	8/29/19	$40,000 to $300,000	Up to 3 years	Phill Gagne, *Phill.Gagne@ed.gov.*
84.305R Research Grants Focused on Systematic Replication	7/11/19	8/29/19	$400,000 to $800,000	Up to 5 years	Christina Chhin, *Christina.Chhin@ed.gov.*
National Center for Special Education Research (NCSER)					
84.324A Special Education Research ▪ Autism Spectrum Disorders	7/11/19	8/29/19	$100,000 to $660,000	Up to 5 years	Sarah Brasiel, *Sarah.Brasiel@ed.gov.*

CFDA No. and name	Application package available	Deadline for transmittal of applications	Estimated range of awards *	Project period	For further information contact
▪ Cognition and Student Learning in Special Education. ▪ Early Intervention and Early Learning in Special Education. ▪ Families of Children with Disabilities. ▪ Professional Development for Educators and School-Based Service Providers. ▪ Reading, Writing, and Language Development. ▪ Science, Technology, Engineering, and Mathematics Education. ▪ Social and Behavioral Outcomes to Support Learning. ▪ Special Education Policy, Finance, and Systems. ▪ Technology for Special Education. ▪ Transition Outcomes for Secondary Students with Disabilities. ▪ Special Topics. ○ Career and Technical Education for Students with Disabilities. ○ English Learners with Disabilities. ○ Systems-Involved Students with Disabilities.					
84.324B Research Training Programs in Special Education. ▪ Postdoctoral Research Training Program in Special Education and Early Intervention ▪ Early Career Development and Mentoring. ▪ Methods Training Using Single Case Designs.	7/11/19	8/29/19	$100,000 to $225,000	Up to 5 years	Katherine Taylor, *Katherine.Taylor@ed.gov.*
84.324R Research Grants Focused on Systematic Replication.	7/11/19	8/29/19	$400,000 to $800,000	Up to 5 years	Katherine Taylor, *Katherine.Taylor@ed.gov.*

* These estimates are annual amounts.
Note: The Department is not bound by any estimates in this notice.
Note: If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

[FR Doc. 2019–13041 Filed 6–18–19; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Minority Science and Engineering Improvement Program (MSEIP)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for the MSEIP, Catalog of Federal Domestic Assistance (CFDA) number 84.120A. This notice relates to the approved information collection under OMB control number 1840–0109.

DATES:

Applications Available: June 19, 2019.

Deadline for Transmittal of Applications: July 19, 2019.

Pre-Application Webinar Information: The Department will hold a pre-application meeting via webinar for prospective applicants. Detailed information regarding this webinar will be provided on the website for the MSEIP at *http://www2.ed.gov/programs/iduesmsi/index.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Bernadette Hence, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–54, Washington, DC 20202. Telephone: (202) 453–7913. Email: *Bernadette.Hence@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MSEIP is designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific and technological careers, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Priorities: This notice contains two competitive preference priorities and one invitational priority. The competitive preference priorities are from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities).

Competitive Preference Priorities: For FY 2019, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional two points to an application that meets Competitive Preference Priority 1 or Competitive Preference Priority 2, for a maximum of four additional points.

These priorities are:

Competitive Preference Priority 1—Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Improving Student Outcomes, and Providing Increased Value to Students and Taxpayers (2 points).

Projects that are designed to address the following priority area:

Supporting innovative strategies or research that have the potential to lead to significant and wide-reaching improvements in the delivery of educational services or other significant and tangible educational benefits to students, educators, or other Department stakeholders.

Competitive Preference Priority 2—Fostering Knowledge and Promoting the Development of Skills That Prepare Students To Be Informed, Thoughtful, and Productive Individuals and Citizens (2 points).

Projects that are designed to address the following priority area:

Supporting instruction in personal financial literacy, knowledge of markets and economics, and knowledge of higher education financing and repayment (*e.g.,* college savings and student loans) or other skills aimed at building personal financial understanding and responsibility.

Invitational Priority: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority—Projects that are Designed to Establish, Improve, or Expand Professional Science Master's (PSM) Degree Programs.

Under this priority, we are particularly interested in projects that are designed to establish, improve, or expand PSM degree programs, which combine traditional academic training with specialized knowledge and skills that: (a) Closely align with the expectations and needs of business and industry and (b) prepare students for direct entry into a variety of science, technology, engineering, and math (STEM) career options in business and industry, Federal government, or non-profit organizations.

Note: Applicants must indicate in the one-page abstract and on the FY 2019 MSEIP Eligibility Certification Form in the application package whether they intend to address one or both of the competitive preference priorities and/or the invitational priority.

Program Authority: 20 U.S.C. 1067–1067k.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 637. (e) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $5,964,726.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards:

Institutional Project Grants: $200,000–$250,000.

Special Project Grants: $200,000–$250,000.

Cooperative Project Grants: $275,000–$300,000.

Estimated Average Size of Awards:

Institutional Project Grants: $240,000.

Special Project Grants: $249,000.

Cooperative Project Grants: $300,000.

Maximum Awards:

Institutional Project Grants: $250,000.

Special Project Grants: $250,000.

Cooperative Project Grants: $300,000.

Estimated Number of Awards:

Institutional Project Grants: 19.

Special Project Grants: 2.

Cooperative Project Grants: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* The eligibility of an applicant is dependent on the type of MSEIP grant the applicant seeks. There are four types of MSEIP grants: Institutional project, special project, cooperative project, and design project.

Institutional project grants are grants that support the implementation of a comprehensive science improvement plan, which may include any combination of activities for improving the preparation of minority students for careers in science.

There are two types of special project grants. First, there are special project grants for which only minority institutions are eligible. These special project grants support activities that: (1) Improve quality training in science and engineering at minority institutions; or (2) enhance the minority institutions' general scientific research capabilities. There also are special project grants for which all applicants are eligible. These special project grants support activities that: (1) Provide a needed service to a group of eligible minority institutions; or (2) provide in-service training for project directors, scientists, and engineers from eligible minority institutions.

Cooperative project grants assist groups of nonprofit accredited colleges and universities to work together to conduct a science improvement program.

Design project grants assist minority institutions that do not have their own appropriate resources or personnel to plan and develop long-range science improvement programs. We will not award design project grants in the FY 2019 competition.

(a) For institutional project grants, eligible applicants are limited to—

(1) Public and private nonprofit institutions of higher education that: (i) Award baccalaureate degrees; and (ii) are minority institutions;

(2) Public or private nonprofit institutions of higher education that: (i) Award associate degrees; and (ii) are minority institutions that (A) have a curriculum that includes science or engineering subjects; and (B) enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering.

(b) For special project grants for which only minority institutions are eligible, eligible applicants are described in paragraph (a).

(c) For special project grants for which all applicants are eligible, eligible applicants include those described in paragraph (a), and—

(1) Nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees that: (i) Provide a needed service to a group of minority institutions; or (ii) provide in-service training to project directors, scientists, and engineers from minority institutions; or

(2) A consortia of organizations that provide needed services to one or more minority institutions, the membership of which may include: (i) Institutions of higher education which have a curriculum in science or engineering; (ii) institutions of higher education that have a graduate or professional program

in science or engineering; (iii) research laboratories of, or under contract with, the Department of Energy, the Department of Defense, or the National Institutes of Health; (iv) relevant offices of the National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, National Science Foundation, and National Institute of Standards and Technology; (v) quasi-governmental entities that have a significant scientific or engineering mission; or (vi) institutions of higher education that have State-sponsored centers for research in science, technology, engineering, and mathematics.

(d) For cooperative project grants, eligible applicants are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: As defined in 34 CFR 637.4(b), ''minority institution'' means an accredited college or university whose enrollment of a single minority group or a combination of minority groups as defined in 34 CFR 637.4 exceeds 50 percent of the total enrollment.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the MSEIP grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2019.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, budget section, including the narrative budget justification; Part IV, the assurance and certifications; or the one-page abstract, the resumes, the biography, or letters of support. However, the recommended page limit does apply to all the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 637.32. Applicants should address each of the selection criteria. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria. All applications will be evaluated based on the selection criteria as follows:

(a) Identification of need for the project (Total 5 points).

(1) The Secretary reviews each application for information that shows the identification of need for the project.

(2) The Secretary looks for information that shows—

(i) An adequate needs assessment;

(ii) An identification of specific needs in science; and

(iii) Involvement of appropriate individuals, especially science faculty, in identifying the institutional needs.

(b) Plan of operation (Total 20 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) Higher quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) Methods of coordination. (See 34 CFR 75.580)

(c) Quality of key personnel (Total 10 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of a racial or ethnic minority group, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) Budget and cost effectiveness (Total 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objective of the project.

Note: The Comprehensive Budget Narrative will be part of the information reviewed under this selection criterion.

(e) Evaluation plan (Total 15 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

Note: In considering the quality of an evaluation plan, for each proposed objective, the Secretary may consider, among other things, the baseline indicators of progress for each proposed grant year, the methods of evaluation, the types of data that will be collected to assess the final project outcomes and the data collection procedures that will be used, the proposed timetable for conducting the evaluation, and the procedures for analyzing and using both formative and summative data.

Note: In considering whether an evaluation plan shows methods of evaluation that are objective, the Secretary considers whether the evaluation is to be conducted by an independent evaluator.

(f) Adequacy of resources (Total 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

Note: An Applicant should indicate if these resources are available at its institution or at partner institutions or if the applicant plans to acquire them.

(g) Potential institutional impact of the project (Total 10 points).

(1) The Secretary reviews each application to determine the extent to which the proposed project gives evidence of potential for enhancing the institution's capacity for improving and maintaining quality science education for its minority students, particularly minority women.

(2) The Secretary looks for information that shows—

(i) For an institutional or cooperative project, the extent to which both the established science education program(s) and the proposed project will expand or strengthen the established program(s) in relation to the identified needs; or

(ii) For a special project, the extent to which it addresses needs that have not been adequately addressed by an existing institutional science program or takes a particularly new and exemplary approach that has not been taken by any existing institutional science program.

(h) Institutional commitment to the project (Total 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to continue the project activities when funding ceases.

(2) The Secretary looks for information that shows—

(i) Adequate institutional commitment to absorb any after-the-grant burden initiated by the project;

(ii) Adequate plans for continuation of project activities when funding ceases;

(iii) Clear evidence of past institutional commitment to the provision of quality science programs for its minority students; and

(iv) A local review statement signed by the chief executive officer of the institution endorsing the project and indicating how the project will accelerate the attainment of the institutional goals in science.

(i) Expected outcomes (Total 10 points).

(1) The Secretary reviews each application to determine the extent to which minority students, particularly minority women, will benefit from the project.

(2) The Secretary looks for information that shows—

(i) Expected outcomes likely to result in the accomplishment of the program goal;

(ii) Educational value for science students; and

(iii) Possibility of long-term benefits to minority students, faculty, or the institution.

(j) Scientific and educational value of the proposed project (Total 10 points).

(1) The Secretary reviews each application for information that shows its potential for contributions to science education.

(2) The Secretary looks for information that shows—

(i) The relationship of the proposed project to the present state of science education;

(ii) The use or development of effective techniques and approaches in science education; and

(iii) Potential use of some aspects of the project at other institutions.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds

$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Under the Government Performance and Results Act, the Department will use the following performance measures to evaluate the success of the MSEIP grants: (1) The percentage of change in the number of full-time, degree-seeking minority undergraduate students at the grantee's institution enrolled in the fields of engineering or physical or biological sciences, compared to the average minority enrollment in the same fields in the three-year period immediately prior to the beginning of the current grant; (2) the percentage of minority students enrolled at four-year minority institutions in the fields of engineering or physical or biological sciences who graduate within six years of enrollment. Please see the application package for details of data collection and reporting requirements for these measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 14, 2019.

Diane Auer Jones,

Principal Deputy Under Secretary Delegated to Perform the Duties of Under Secretary and Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2019–13008 Filed 6–18–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0028]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2019–20 Through 2021–22

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 19, 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–2019–ICCD–0028. 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 Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

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: Integrated Postsecondary Education Data System (IPEDS) 2019–20 through 2021–22.

OMB Control Number: 1850–0582.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 67,785.

Total Estimated Number of Annual Burden Hours: 791,721.

Abstract: The National Center for Education Statistics (NCES) seeks authorization from OMB to make a change to the Integrated Postsecondary Education Data System (IPEDS) data collection. Current authorization expires February 29, 2020 (OMB# 1850–0582 v.20–23). NCES is requesting a new clearance for the 2019–20, 2020–21, and 2021–22 data collections to enable us to make a change to six of the IPEDS data collection components, clarify definitions and instructions throughout the components, and to continue the IPEDS collection of postsecondary data over the next three years. IPEDS is a web-based data collection system designed to collect basic data from all postsecondary institutions in the United States and the other jurisdictions. IPEDS enables NCES to report on key dimensions of postsecondary education such as enrollments, degrees and other awards earned, tuition and fees, average net price, student financial aid, graduation rates, student outcomes, revenues and expenditures, faculty salaries, and staff employed. The IPEDS web-based data collection system was implemented in 2000–01. In 2017–18, IPEDS collected data from 6,642 postsecondary institutions in the United States and the other jurisdictions that are eligible to participate in Title IV Federal financial aid programs. All Title IV institutions are required to respond to IPEDS (Section 490 of the Higher Education Amendments of 1992 [Pub. L. 102–325]). IPEDS allows other (non-title IV) institutions to participate on a voluntary basis; approximately 200 non-title IV institutions elect to respond each year. IPEDS data are available to the public through the College Navigator and IPEDS Data Center websites. This clearance package includes a number of proposed changes to the data collection. As part of the public comment period review, NCES requests that IPEDS data submitters and other stakeholders respond to the directed questions found in Appendix D of this submission.

Dated: June 14, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–12993 Filed 6–18–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 19–61–LNG]

Freeport LNG Development, L.P.; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas on a Short-Term Basis to Non-Free Trade Agreement Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on May 20, 2019, by Freeport LNG Development, L.P. (Freeport LNG), requesting blanket authorization to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in an amount up to the equivalent of 24 billion cubic feet (Bcf) of natural gas on a short-term or spot market basis for a two-year period commencing on July 19, 2019. In the portion of the Application subject to this Notice, Freeport LNG seeks to export the LNG from the Freeport LNG Terminal owned by Freeport LNG, on Quintana Island, Texas, to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in Freeport LNG's Application, posted on the DOE/FE website at: *https://www.energy.gov/fe/freeport-lng-development-lp-fe-docket-no-19-61-lng-export-lng.*

Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, July 19, 2019.

ADDRESSES:

Electronic Filing by Email

fergas@hq.doe.gov

Regular Mail

U.S. Department of Energy (FE–34), Office of Regulation, Analysis and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Regulation, Analysis and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Beverly Howard or Larine Moore, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9387; (202) 586–9478.

Cassandra Bernstein, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Ave. SW, Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

Freeport LNG's current blanket authorization to export previously imported LNG, granted in DOE/FE Order No. 4054, began on July 19, 2017, and extends through July 18, 2019. In requesting this authorization, Freeport LNG states that it does not seek to export any domestically produced natural gas or LNG. DOE/FE notes that Freeport LNG currently holds a blanket authorization to import LNG from various international sources by vessel in an amount up to the equivalent of 30 Bcf of natural gas. Freeport LNG is requesting this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export.

The Application will be reviewed pursuant to section 3 of the NGA, 15 U.S.C. 717b. In reviewing this Application, DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov*, with FE Docket No. 19–61–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 19–61–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on June 13, 2019.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy.

[FR Doc. 2019–12978 Filed 6–18–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 19–62–LNG]

Cameron LNG, LLC; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas on a Short-Term Basis to Non-Free Trade Agreement Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on May 23, 2019, by Cameron LNG, LLC (Cameron LNG), requesting blanket authorization to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in an amount up to the equivalent of 2 billion cubic feet (Bcf) of natural gas on a short-term or spot market basis for a two-year period commencing no later than October 1, 2019. Cameron LNG seeks to export the LNG from the Cameron LNG Terminal located in Cameron and Calcasieu Parishes, Louisiana, to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in Cameron LNG's Application, posted on the DOE/FE

website at: *https://www.energy.gov/fe/cameron-lng-llc-fe-docket-no-19-62-lng-ftanfta.* Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, July 19, 2019.

ADDRESSES: *Electronic Filing by email: fergas@hq.doe.gov.*

Regular Mail: U.S. Department of Energy (FE–34) Office of Regulation, Analysis and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34) Office of Regulation, Analysis and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Beverly Howard or Larine Moore, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9387; (202) 586–9478.

Cassandra Bernstein, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Ave. SW, Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

Cameron LNG states that it does not seek authorization to export any domestically produced natural gas or LNG. Cameron LNG is requesting this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export. The Application will be reviewed pursuant to section 3 of the NGA, 15 U.S.C. 717b. In reviewing this Application, DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 19–62–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 19–62–LNG. *Please Note:* If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on June 13, 2019.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy.

[FR Doc. 2019–12979 Filed 6–18–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–123–000.
Applicants: Burke Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Burke Wind, LLC.
Filed Date: 6/11/19.
Accession Number: 20190611–5049.
Comments Due: 5 p.m. ET 7/2/19.

Docket Numbers: EG19–124–000.
Applicants: Skeleton Creek Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Skeleton Creek Wind, LLC.
Filed Date: 6/11/19.
Accession Number: 20190611–5081.
Comments Due: 5 p.m. ET 7/2/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3140–03.5.

Applicants: Inland Empire Energy Center, LLC.
Description: Triennial Updated Market Power Analysis for the Southwest Region of Inland Empire Energy Center, LLC.
Filed Date: 6/10/19.
Accession Number: 20190610–5130.
Comments Due: 5 p.m. ET 8/9/19.

Docket Numbers: ER19–2088–000.
Applicants: Lamarr Energy, LLC.
Description: Tariff Cancellation: Market Based Rate Tariff to be effective 6/10/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5065.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2089–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: Certificate of Concurrence to the LGIA (Northwestern) to be effective 6/10/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5097.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2090–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2899R1 Pawnee Wind Farm GIA Cancellation to be effective 5/12/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5098.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2091–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–06–10_SA 3314 Entergy Louisiana-St James Solar GIA (J1142) to be effective 5/24/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5099.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2092–000.
Applicants: GridLiance Heartland LLC.
Description: Baseline eTariff Filing: Initial Rate Filing—OATT to be effective 8/9/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5101.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2093–000.
Applicants: Southwestern Public Service Company.
Description: § 205(d) Rate Filing: SPS–INV–G–EP–Gen–2016–123_Sagamore Wind EP Agrmt—0.0.0 to be effective 6/11/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5102.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2094–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 20190610 ADIT Double Averaging to be effective 8/9/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5103.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2095–000.
Applicants: Rocky Mountain Reserve Group.
Description: § 205(d) Rate Filing: RMRG Bylaws Revision to be effective 8/1/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5104.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2096–000.
Applicants: Emera Energy Services Subsidiary No. 14 LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 6/12/2019.
Filed Date: 6/11/19.
Accession Number: 20190611–5041.
Comments Due: 5 p.m. ET 7/2/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–33–000.
Applicants: Northern Indiana Public Service Company.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Northern Indiana Public Service Company LLC.
Filed Date: 6/11/19.
Accession Number: 20190611–5020.
Comments Due: 5 p.m. ET 7/2/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–12967 Filed 6–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link.

Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requestor
Prohibited:		
1. CP17–495–000, CP17–494–000	6–4–2019	West Coast Contractors.
2. P–14227–003	6–4–2019	William and Teryn Miller.
3. P–14227–000	6–4–2019	Daniel R. Hume.
Exempt:		
P–14795–002	6–4–2019	FERC Staff.[1]

[1] Telephone Memorandum conference call on June 4, 2019 with JT Steenkamp from Shell North America (US) L.P. (Shell).

Dated: June 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–12972 Filed 6–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–126–000.
Applicants: Emmons-Logan Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Emmons-Logan Wind, LLC.
Filed Date: 6/13/19.
Accession Number: 20190613–5107.
Comments Due: 5 p.m. ET 7/5/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1257–007; ER10–1258–007.
Applicants: Wabash Valley Power Association, Inc., Wabash Valley Energy Marketing, Inc.
Description: Supplement to December 21, 2017 Updated Triennial Market Power Analysis in the MISO Balancing Area Authority of Wabash Valley Power Association, Inc., *et al.*
Filed Date: 6/13/19.
Accession Number: 20190613–5098.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–1463–002.
Applicants: Upper Michigan Energy Resources Corporation.
Description: Tariff Amendment: Supplement to Filing of Amendment to WDSA to be effective 4/1/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5069.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–1818–001.
Applicants: El Paso Electric Company.
Description: Tariff Amendment: Rate Schedule No. 118, EPE–EDF Engineering & Procurement Agreement to be effective 5/10/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5136.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–1874–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to NQ147–1 Filing; Notice of Cancellation of NQ147 to be effective 4/22/2019.
Filed Date: 6/12/19.
Accession Number: 20190612–5148.
Comments Due: 5 p.m. ET 7/3/19.

Docket Numbers: ER19–2111–000.
Applicants: Public Service Company of New Mexico.
Description: Notice of cancellation of Interconnection Service Agreement (No. 305) of Public Service Company of New Mexico.
Filed Date: 6/12/19.
Accession Number: 20190612–5107.
Comments Due: 5 p.m. ET 7/3/19.

Docket Numbers: ER19–2112–000.
Applicants: Sky River LLC.
Description: Compliance filing: Sky River LLC Order No. 845 & 845–A Compliance Filing to be effective 5/22/2019.
Filed Date: 6/12/19.
Accession Number: 20190612–5150.
Comments Due: 5 p.m. ET 7/3/19.

Docket Numbers: ER19–2113–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA No. 5409; Queue No. AC1–166 to be effective 5/16/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5000.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2114–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2019–06–13_SA 3316 Otter Tail-Dakota Range III FSA Blair (J488) to be effective 8/13/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5031.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2115–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1883R8 Westar Energy, Inc. NITSA NOA—Alma to be effective 9/1/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5037.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2116–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 808 Rev 1st—LGIA with Clearwater (Rosebud County Wind) to be effective 8/13/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5061.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2117–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 807 Rev 1st—LGIA with Buffalo Trail Solar Energy to be effective 8/13/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5062.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2118–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2019–06–12_SA 3319 Otter Tail-Flying Cow Wind FSA Blair (J493) to be effective 8/13/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5064.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2119–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2019–06–13_SA 3320 Otter Tail-Deuel Harvest Wind Energy Blair (J526) to be effective 8/13/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5071.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2120–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1884R9 Westar Energy, Inc. NITSA NOA—Blue Mound to be effective 9/1/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5073.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2121–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1885R9 Westar Energy, Inc. NITSA NOA—Bronson to be effective 9/1/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5077.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2122–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1886R8 Westar Energy, Inc. NITSA NOA—Doniphan REC to be effective 9/1/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5090.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2123–000.
Applicants: Sierra Pacific Power Company.
Description: § 205(d) Rate Filing: Service Agreement No. 19–00026 SPPC Open Mountain SGIA to be effective 6/14/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5110.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2124–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1887R9 Westar Energy, Inc. NITSA NOA—Elsmore to be effective 9/1/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5116.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2125–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to First Revised ISA, SA No. 4776, Queue No. AB1–014/AC2–066 to be effective 4/16/2018.
Filed Date: 6/13/19.
Accession Number: 20190613–5124.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2126–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1897R9 Westar Energy, Inc. NITSA NOA—Elwood to be effective 9/1/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5125.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2127–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–06–13_SA 2465 Rock Aetna Power-Northern States Power 2nd Revised GIA (G621) to be effective 6/14/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5130.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2128–000.
Applicants: NRG Sterlington Power LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 5/15/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5141.
Comments Due: 5 p.m. ET 7/5/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–34–000.
Applicants: Consumers Energy Company.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Consumers Energy Company.
Filed Date: 6/12/19.
Accession Number: 20190612–5175.
Comments Due: 5 p.m. ET 7/3/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 13, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–12964 Filed 6–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8709–000]

Henley, Greg; Notice of Filing

Take notice that on June 13, 2019, Greg Henley filed an application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b), and Part 45 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 45 (2019).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 5, 2019.

Dated: June 13, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–12965 Filed 6–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–1115–003.
Applicants: Saltville Gas Storage Company L.L.C.
Description: Compliance filing Saltville RP18–1115 Compliance Filing—Fuel Reimbursement to be effective 7/1/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5073.
Comments Due: 5 p.m. ET 6/24/19.

Docket Numbers: RP19–1311–000.
Applicants: Granite State Gas Transmission, Inc.
Description: Compliance filing internet Compliance Filing to be effective 8/1/2019.
Filed Date: 6/11/19.
Accession Number: 20190611–5124.
Comments Due: 5 p.m. ET 6/24/19.

Docket Numbers: RP19–1312–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Compliance filing 061219 Compliance Filing Implementing Approved Settlement Rates to be effective 7/1/2019.
Filed Date: 6/12/19.
Accession Number: 20190612–5020.
Comments Due: 5 p.m. ET 6/24/19.

Docket Numbers: RP19–1313–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates Cleanup Filing June 2019—various South Jersey to be effective 7/12/2019.
Filed Date: 6/12/19.
Accession Number: 20190612–5026.
Comments Due: 5 p.m. ET 6/24/19.

Docket Numbers: RP19–343–005.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing TETLP Compliance Filing—RP19–343–000 to be effective 1/1/2019.
Filed Date: 6/12/19.
Accession Number: 20190612–5102.
Comments Due: 5 p.m. ET 6/24/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 13, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–12968 Filed 6–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR17–54–001.
Applicants: B&W Pipeline, LLC.
Description: Tariff filing per 284.123(b),(e)/: SOC to be effective 7/17/2017.
Filed Date: 6/6/19.
Accession Number: 201906065083.
Comments/Protests Due: 5 p.m. ET 6/27/19.

Docket Numbers: RP01–382–029.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits Carlton Reimbursement Report under RP01–382.
Filed Date: 6/3/19.
Accession Number: 20190603–5197.
Comments Due: 5 p.m. ET 6/17/19.

Docket Numbers: RP19–1310–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20190607 Negotiated Rate to be effective 6/8/2019.
Filed Date: 6/7/19.
Accession Number: 20190607–5128.
Comments Due: 5 p.m. ET 6/19/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–12969 Filed 6–18–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0039; FRL–9993–91]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients (April 2019)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before July 19, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

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

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

A. New Active Ingredients

1. File Symbol: 85797–U. *Docket ID number:* EPA–HQ–OPP–2019–0067. *Applicant:* TDA Research, Inc., 12345 West 52nd Ave., Wheat Ridge, CO 80033. *Product name:* ElimiMold. *Active ingredient:* Light activator—Erythrosine at 0.001%. *Proposed use:* Antimicrobial/algaecide.

2. File Symbol: 87978–I. *Docket ID number:* EPA–HQ–OPP–2019–0265. *Applicant:* AgBiTech Pty Ltd., 8 Rocla Ct., Glenvale, Queensland 4350, Australia (c/o V.A. Forster Consulting, Inc., P.O. Box 4097, Wilmington, DE 19807). *Product name:* Surtivo Ultra. *Active ingredients:* Insecticide—*Autographa californica* MNPV strain R3 at 8.6%, *Helicoverpa armigera* Nucleopolyhedrovirus ABA–NPV–U at 8.6%, *Chrysodeixis includens* Nucleopolyhedrovirus isolate #460 at 8.6%, and *Spodoptera frugiperda* MNPV strain 3AP2 at 8.6%. *Proposed use:* Field and greenhouse.

3. File Symbol: 87978–O. *Docket ID number:* EPA–HQ–OPP–2019–0265. *Applicant:* AgBiTech Pty Ltd., 8 Rocla Ct., Glenvale, Queensland 4350, Australia (c/o V.A. Forster Consulting, Inc., P.O. Box 4097, Wilmington, DE 19807). *Product name:* Surtivo Plus. *Active ingredients:* Insecticide—*Autographa californica* MNPV strain R3 at 19.6%, *Helicoverpa armigera* Nucleopolyhedrovirus ABA–NPV–U at 4.9%, *Chrysodeixis includens* Nucleopolyhedrovirus isolate #460 at 4.9%, and *Spodoptera frugiperda* MNPV strain 3AP2 at 4.9%. *Proposed use:* Field and greenhouse.

4. File Symbol: 87978–T. *Docket ID number:* EPA–HQ–OPP–2019–0265. *Applicant:* AgBiTech Pty Ltd., 8 Rocla Ct., Glenvale, Queensland 4350, Australia (c/o V.A. Forster Consulting, Inc., P.O. Box 4097, Wilmington, DE 19807). *Product name:* Lepigen. *Active ingredient:* Insecticide—*Autographa californica* MNPV strain R3 at 34.2%. *Proposed use:* Field and greenhouse.

5. File Symbol: 92083–E. *Docket ID number:* EPA–HQ–OPP–2019–0084. *Applicant:* Bi-PA nv, Technologielaan 7, B–1840 Londerzeel, Belgium (c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192). *Product name:* Vintec. *Active ingredient:* Fungicide—*Trichoderma atroviride* strain SC1 at 15.0%. *Proposed use:* Protection of almonds and grapevines against wood fungal diseases.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 15, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2019–12949 Filed 6–18–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1078]

Information Collection Being Submitted for Review and Approval to 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, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for 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 July 19, 2019. If you anticipate that you will be submitting comments but find it difficult to do so with 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 Cathy Williams, FCC, via email

PRA@fcc.gov and to *Cathy.Williams@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 Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1078.

Title: Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53. Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Individuals or households.

Number of Respondents and Responses: 1,908.572 respondents; 1,908,572 responses.

Estimated Time per Response: .5–1 hour (average per response).

Frequency of Response: Recordkeeping requirement; On occasion reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is the CAN–SPAM Act of 2003, 15 U.S.C. 7701–7713, Public Law 108–187, 117 Stat. 2719.

Total Annual Burden: 1,237,036 hours.

Total Annual Cost: $579,995.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries and Requests for Dispute Assistance'', which became effective on September 24, 2014.

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: The reporting requirements included under this OMB Control Number 3060–1078 enable the Commission to collect information regarding violations of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act). This information is used to help wireless subscribers stop receiving unwanted commercial mobile services messages.

On August 12, 2004, the Commission released an Order, Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53, FCC 04–194, published at 69 FR 55765, September 16, 2004, adopting rules to prohibit the sending of commercial messages to any address referencing an internet domain name associated with wireless subscribers' messaging services, unless the individual addressee has given the sender express prior authorization. The information collection requirements consist § 64.3100 (a)(4), (d), (e) and (f) of the Commission's rules.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–12982 Filed 6–18–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201251–002.

Agreement Name: Hapag-Lloyd/Maersk Line Slot Exchange Agreement.

Parties: Hapag-Lloyd AG and Maersk Line A/S.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment revises Article 5.1 to reflect changes in the amount of space to be exchanged under the Agreement.

Proposed Effective Date: 7/26/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/10190.

Dated: June 14, 2019.

Rachel Dickon,

Secretary.

[FR Doc. 2019–13042 Filed 6–18–19; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

June 17, 2019.

TIME AND DATE: 10 a.m., Wednesday, July 17, 2019.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Sunbelt Rentals, Inc.,* Docket No. VA 2013–291. (Issues include whether the Judge erred in ruling that a

particular location in a preheat tower was a ''working place'' for purposes of an examination requirement.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 867–4769, Passcode: 678–100.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2019–13102 Filed 6–17–19; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Notice

June 17, 2019.

TIME AND DATE: 10 a.m., Tuesday, July 16, 2019.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *Sunbelt Rentals, Inc.,* Docket No. VA 2013–291. (Issues include whether the Judge erred in ruling that a particular location in a preheat tower was a ''working place'' for purposes of an examination requirement.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 867–4769, Passcode: 678–100.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2019–13098 Filed 6–17–19; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First State Bancshares, Inc., New London, Wisconsin;* to merge with Pioneer Bancorp, Inc. and indirectly acquire Pioneer Bank, both of Auburndale, Wisconsin.

Board of Governors of the Federal Reserve System, June 14, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–13034 Filed 6–18–19; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 182 3152]

SecurTest, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 19, 2019.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''SecurTest, Inc.; File No. 182 3152'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robin Wetherill (202–326–2220), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 14, 2019), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 19, 2019. Write ''SecurTest, Inc.; File No. 182 3152'' on your comment. Your comment—including your name and your state—will be placed on the public record of this

proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''SecurTest, Inc.; File No. 182 3152'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 19, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from SecurTest, Inc. (''SecurTest'' or ''Respondent'').

The proposed consent order (''proposed order'') has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that SecurTest made concerning its participation in the Privacy Shield frameworks agreed upon by the U.S. and, respectively, the European Union (''EU'') and the Swiss Federation. The Privacy Shield frameworks allow U.S. companies to receive personal data transferred from the EU and Switzerland without violating EU or Swiss law. The frameworks consist of a set of principles and related requirements that have been deemed by the European Commission and the Swiss authorities as providing ''adequate'' privacy protection. The principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. The related requirements include, for example, securing an independent recourse mechanism to handle any disputes about how the company handles information about EU citizens.

To participate in the frameworks, a company must comply with the Privacy Shield principles and self-certify that compliance to the U.S. Department of Commerce (''Commerce''). Commerce reviews companies' self-certification applications and maintains a public website, *https://www.privacyshield.gov/list,* where it posts the names of companies who have completed the requirements for certification. Companies are required to recertify every year in order to continue benefitting from Privacy Shield.

SecurTest is a background screening company. It primarily performs pre-employment background screening for private companies and government entities. According to the Commission's complaint, from approximately October 2017 until July 2018, SecurTest published on its website, *http://www.securtest.com,* a privacy policy containing statements related to its participation in Privacy Shield.

The Commission's proposed one-count complaint alleges that Respondent violated Section 5(a) of the Federal Trade Commission Act. Specifically, the proposed complaint alleges that Respondent engaged in a deceptive act or practice by falsely representing that it was a certified participant in the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks.

Part I of the proposed order prohibits the company from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework.

Parts II through V of the proposed order are reporting and compliance provisions. Part II requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part III ensures notification to the FTC of changes in corporate status and mandates that the company submit an initial compliance report to the FTC. Part IV requires the company to create certain documents relating to its compliance with the order for ten years and to retain those documents for a five-year period. Part V mandates that the company make

available to the FTC information or subsequent compliance reports, as requested.

Part VI is a provision ''sun-setting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–13003 Filed 6–18–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0557]

Agency Information Collection Activities; Proposed Collection; Comment Request; Postmarket Surveillance of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for postmarket surveillance of medical devices.

DATES: Submit either electronic or written comments on the collection of information by August 19, 2019.

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 August 19, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 19, 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–2013–N–0557 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Postmarket Surveillance of Medical Devices.'' 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: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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. ''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 (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an

existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Postmarket Surveillance of Medical Devices—21 CFR Part 822

OMB Control Number 0910–0449—Extension

Section 522 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360l) authorizes FDA to require a manufacturer to conduct postmarket surveillance (PS) of any device that meets the criteria set forth in the statute. The PS regulation establishes procedures that FDA uses to approve and disapprove PS plans. The regulation provides instructions to manufacturers, so they know what information is required in a PS plan submission. FDA reviews PS plan submissions in accordance with 21 CFR 822.15 through 822.19 of the regulation, which describe the grounds for approving or disapproving a PS plan. In addition, the PS regulation provides instructions to manufacturers to submit interim and final reports in accordance with § 822.38 (21 CFR 822.38). Respondents to this collection of information are those manufacturers that require PS of their products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
PS submission (822.9 and 822.10)	25	1	25	120	3,000
Changes to PS plan after approval (822.21)	9	1	9	40	360
Changes to PS plan for a device that is no longer marketed (822.28)	6	1	6	8	48
Waiver (822.29)	1	1	1	40	40
Exemption request (822.30)	16	1	16	40	640
Periodic reports (822.38)	25	3	75	40	3,000
Total					7,088

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Explanation of Reporting Burden Estimate: The burden captured in table 1 is based on the data from FDA's internal tracking system. Sections 822.26, 822.27, and 822.34 do not constitute information collection subject to review under the PRA because it entails no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument (See 5 CFR 1320.3(h)(1)).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Manufacturer records (822.31)	25	1	25	20	500
Investigator records (822.32)	75	1	75	5	375
Total					875

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Explanation of Recordkeeping Burden Estimate: FDA expects that at least some of the manufacturers will be able to satisfy the PS requirement using information or data they already have. For purposes of calculating burden, however, FDA has assumed that each PS order can only be satisfied by a 3-year clinically based surveillance plan, using three investigators. These estimates are based on FDA's knowledge and experience with PS.

Our estimated burden for the information collection reflects a decrease of 29,982 hours. We attribute this adjustment to a decrease in the number of submissions we received over the last few years.

Dated: June 14, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–13004 Filed 6–18–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0823]

Agency Information Collection Activities; Proposed Collection; Comment Request; Format and Content Requirements for Over-the-Counter Drug Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the standardized format and content requirements for the labeling of over-the-counter (OTC) drug products.

DATES: Submit either electronic or written comments on the collection of information by August 19, 2019.

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 August 19, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 19, 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–2013–N–0823 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Format and Content Requirements for Over-the-Counter Drug Product Labeling.'' 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: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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. ''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 (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Format and Content Requirements for Over-the-Counter Drug Product Labeling—21 CFR Part 201

OMB Control Number 0910–0340—Extension

This information collection supports FDA regulations at § 201.66 (21 CFR 201.66), which establish standardized content and format requirements for the labeling of all marketed OTC drug products. The regulations set forth the content and format requirements for the Drug Facts portion of labels on OTC drug products. These regulations require OTC drug product labeling to include uniform headings and subheadings, presented in a standardized order, with minimum standards for type size and other graphical features.

Currently marketed OTC drug products are already required to comply with these labeling requirements and will incur no further burden to comply with Drug Facts labeling requirements in § 201.66. Labeling modifications already required to be in Drug Facts format are ''usual and customary'' as part of routine redesign practice, thus they do not create additional burden within the meaning of the PRA.

Therefore, burden for this information collection is that which is necessary to comply with the labeling requirements in § 201.66, applicable to new OTC drug products and OTC sunscreen drug products introduced to the marketplace under new drug applications, abbreviated new drug applications, or an OTC drug monograph. New OTC drug products must comply with the labeling requirements in § 201.66 as they are introduced to the marketplace.

Based on our electronic drug registration and listing database, we estimate that approximately 10,463 new OTC drug product stock keeping units (SKUs) are introduced to the marketplace each year. We estimate that these SKUs are marketed by 1,416 manufacturers. We estimate that the preparation of labeling for new OTC drug products requires 12 hours to prepare, complete, and review prior to submitting the new labeling to us. Based on this estimate, the annual reporting burden for this type of labeling is 94,296 hours.

All currently marketed sunscreen products are required to comply with the Drug Facts labeling requirements in § 201.66, so they will incur no further burden under the information collection provisions in the regulation. However, a new OTC sunscreen drug product, like any new OTC drug product, will be subject to a one-time burden to comply with Drug Facts labeling requirements in § 201.66. We estimate, based on our electronic drug registration and listing database, that 5,253 new SKUs of OTC sunscreen drug products will be marketed each year. We estimate that these 5,253 SKUs will be marketed by 294 manufacturers. We estimate that 12 hours will be spent on each label. This is reflected in table 1, row 1.

When determining the burden for § 201.66, it is also important to consider exemptions or deferrals of the regulation allowed products under § 201.66(e). We receive very few requests for exemptions or deferrals. We also estimate that a request for deferral or exemption requires 24 hours to complete. This is reflected in table 1, row 2.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosure	Average burden per disclosure	Total hours
§ 201.66(c) and (d) for new OTC drug products	855	9.19	7,858	12	94,296
§ 201.66(e)	1	1	1	24	24
Total					94,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall increase of 82,797 hours and a corresponding increase of 6,898 disclosures. This increase corresponds with data obtained from our database.

Dated: June 14, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–12996 Filed 6–18–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2683]

Agency Information Collection Activities; Proposed Collection; Comment Request; Data To Support Social and Behavioral Research as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a generic clearance to collect information to support social and behavioral research used by FDA about drug products.

DATES: Submit either electronic or written comments on the collection of information by August 19, 2019.

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 August 19, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 19, 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–2016–N–2683 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Data to Support Social and Behavioral Research as Used by the Food and Drug Administration.'' 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: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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. ''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 (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Data To Support Social and Behavioral Research as Used by the Food and Drug Administration

OMB Control Number 0910–0847—Extension

Understanding patients, consumers, and healthcare professionals' perceptions and behaviors plays an important role in improving FDA's regulatory decisionmaking processes and communications impacting various stakeholders. The methods used to achieve these goals include individual in-depth interviews, general public focus group interviews, intercept interviews, self-administered surveys, gatekeeper surveys, and focus group interviews. The methods used serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative and quantitative research tool, and have two major purposes:

1. To obtain information that is useful for developing variables and measures for formulating the basic objectives of social and behavioral research and

2. To assess the potential effectiveness of FDA communications, behavioral interventions and other materials in reaching and successfully communicating and addressing behavioral change with their intended audiences.

FDA will use these methods to test and refine its ideas and to help develop communication and behavioral

strategies research, but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

FDA's Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research, Office of the Commissioner, and any other Centers or Offices will use this mechanism to test communications and social and behavioral methods about regulated drug products on a variety of subjects related to consumer, patient, or healthcare professional perceptions, beliefs, attitudes, behaviors, and use of drug and biological products and related materials including, but not limited to, social and behavioral research, decision-making processes, and communication and behavioral change strategies.

Annually, FDA projects about 45 social and behavioral studies using the variety of test methods listed in this document. FDA is requesting this burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Interviews/Surveys	2,520	14.6	36,792	.25 (15 minutes).	9,198

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: June 14, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–13001 Filed 6–18–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: The Teaching Health Center Graduate Medical Education Program Eligible Resident/Fellow FTE Chart, OMB No. 0915–0367—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than August 19, 2019.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail them to HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: The Teaching Health Center Graduate Medical Education (THCGME) Program Eligible Resident/Fellow FTE Chart, OMB No. 0915–0367—Extension.

Abstract: The Teaching Health Center Graduate Medical Education (THCGME) Program, Section 340H of the Public Health Service Act, was established by Section 5508 of Public Law 111–148. The Bipartisan Budget Act of 2018 (Pub. L. 115–123) provided continued funding for the THCGME Program. The THCGME Program awards payment for both direct and indirect expenses to support training for primary care residents in community-based ambulatory patient care settings. The THCGME Program Eligible Resident/Fellow Full-Time Equivalents (FTE) Chart, published in the THCGME Notice of Funding Opportunity (NOFO), is a means for determining the number of eligible resident/fellow FTE's in an applicant's primary care residency program.

Need and Proposed Use of the Information: THCGME Program Eligible Resident/Fellow FTE Chart requires applicants to provide: (a) Data related to the size and/or growth of the residency program over previous academic years, (b) the number of residents enrolled in the program during the baseline academic year, and (c) a projection of the program's proposed expansion over the next five academic years. It is imperative that applicants complete this chart to quantify the total supported residents. THCGME funding is used to support an expanded number of residents in a residency program, to establish a new residency training program, or to maintain filled positions at existing programs. Utilization of a chart to gather this important information has decreased the number of errors in the eligibility review process resulting in a more accurate review and funding process, and comports with the regulatory requirement imposed by 45 CFR 75.206(a) ''*Standard application requirements, including forms for applying for HHS financial assistance, and state plans.*''

Likely Respondents: Teaching Health Centers applying for THCGME funding through a THCGME NOFO process, which may include new applicants and existing awardees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search

data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Teaching Health Center GME Program Eligible Resident/Fellow FTE Chart	90	1	90	1	90
Total	90		90		90

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–12961 Filed 6–18–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Standardized Work Plan Form for Use With Applications to the Bureau of Health Workforce Research and Training Grants and Cooperative Agreements, OMB No. 0906–xxxx–New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than August 19, 2019.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Standardized Work Plan (SWP) Form for Use with Applications to the Bureau of Health Workforce (BHW) Research and Training Grants and Cooperative Agreements, OMB No. 0906–xxxx–New.

Abstract: BHW requires applicants for training and research grants and cooperative agreements to submit a work plan that describes the timeframes and deliverables required during the grant period of performance to address each of the needs detailed in the Purpose and Need section of the application, as required in the Notice of Funding Opportunity (NOFO) announcement. Applicants are currently able to submit work plans in a non-standardized format.

In order to standardize the data provided by applicants to make informed decisions about funding and assist with monitoring awardee progress, BHW plans to require applicants to complete a SWP form in lieu of submitting a work plan in the applicant's own format. Applicants will use the SWP form when they submit their proposals, and grantees and Project Officers will use the SWP information to assist in monitoring progress once HRSA makes the awards.

Need and Proposed Use of the Information: The information collected by the SWP form is necessary to standardize and streamline the data used by HRSA in reviewing applications and monitoring awardees. The form will ask applicants to provide a description of the activities or steps the recipient will take to achieve each of the objectives proposed during to the entire period of performance. The current variation in formats and data submitted by applicants reduces efficiency in reviewing, awarding, and monitoring each project, so this change will remedy that inefficiency. In addition, seeking OMB approval comports with the regulatory requirement imposed by 45 CFR 75.206(a), Paperwork clearances.

The proposed SWP form will be used to provide information to assess applications for awards including ranking applications as part of the grant review process. BHW will also use the information to assess whether current recipients of grant funding have met statutory and programmatic requirements.

Likely Respondents: Respondents will be applicants to HRSA's research and training programs in BHW.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
SWP	1,000	1	1,000	1	1,000
Total	1,000		1,000		1,000

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–12959 Filed 6–18–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: Ryan White HIV/AIDS Program Recipient Compilation of Best Practice Strategies and Interventions, OMB No. 0906–xxxx–New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than August 19, 2019.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer, at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Ryan White HIV/AIDS Program (RWHAP) Recipient Compilation of Best Practice Strategies and Interventions, OMB No. 0906–xxxx–New.

Abstract: HRSA's Ryan White HIV/AIDS Program (RWHAP) funds and coordinates with cities, states, and local clinics/community-based organizations to deliver efficient and effective HIV care, treatment, and support to low-income people with HIV. Nearly two-thirds of clients (patients) live at or below 100 percent of the federal poverty level and approximately three-quarters of RWHAP clients are racial/ethnic minorities. Since 1990, the RWHAP has developed a comprehensive system of safety net providers who deliver high quality direct health care and support services to over half a million people living with HIV—more than 50 percent of all people living with diagnosed HIV in the United States. HRSA's HIV/AIDS Bureau (HAB) is developing a comprehensive, web-based compilation of RWHAP recipient and subrecipient best practice strategies and interventions. When completed, the online recipient compilation will be housed on *TargetHIV.org* (HRSA HAB's technical assistance site for recipients and subrecipients) and structured to allow programs to easily search and identify RWHAP best practice strategies and interventions for implementation. Recipients and subrecipients may voluntarily complete a submission form, also housed on *TargetHIV.org,* when they have a best practice strategy or intervention to share. Strategies and interventions that meet certain criteria will be incorporated into the online compilation.

The project team has developed a draft submission form and criteria for the types of strategies and interventions to be included in the compilation based on: (1) The quality and relevance of the approach to the RWHAP; (2) the level of feasibility, replicability, and sustainability; and (3) the quality of evidence that supports the approach's results.

Specifically, this information collection request involves three forms of data collection as described below.

1. *Pre-Submission Screening Form:* Through extensive outreach, the project team expects up to 70 recipients and subrecipients to express interest in submission. They will be asked four screening questions to determine whether they are eligible for inclusion in the compilation.

2. *Submission Form:* Recipients and subrecipients that screen eligible will then complete a submission form describing their strategy or intervention, including service delivery model, target population, expected or achieved outcomes, and resource requirements. The project team will score the submissions based on the established criteria.

3. *Site Visit Discussion Guide:* The project team will conduct up to 30 site visits to test the criteria and gather feedback on the submission form and compilation. The half-day site visits will involve individual or small group discussions with program staff involved in implementation (*e.g.,* program managers, direct service providers, and evaluators). The project team will then revise the submission form, criteria, and compilation template based on feedback.

Need and Proposed Use of the Information: The purpose of this data collection effort is for HRSA contractors to assess the review criteria being used to systematically identify and select RWHAP-funded best practice strategies or interventions that demonstrate impact across the HIV care continuum for the online compilation.

Assessing the review criteria will allow HRSA to obtain important information from recipients and determine if the strategies or interventions shared via the submission

form are effective in improving outcomes across the HIV care continuum. Strategies and interventions that meet the review criteria verified by HRSA contractors and approved by HRSA program staff through this data collection will be considered best practices and made available through the online compilation for consideration, adaptation, and replication by other HIV programs. In addition, the best practices will support peer exchange to resolve problems impacting HIV care and treatment and eliminating disparities in health outcomes.

Likely Respondents: RWHAP recipients and subrecipients that voluntarily submit a best practice strategy or intervention will participate in the data collection. The project team expects that up to 70 recipients and subrecipients will complete the screening form and 50 will screen eligible and complete the full submission form. For the site visits, the project team will strategically select 30 sites from the universe of submitted eligible initiatives, ensuring a range of scores and representativeness of factors such as Census region, proposed strategy/intervention outcome, priority population, and the type of agency or provider implementing the strategy or intervention.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Pre-Submission Screening Form	70	1	70	0.08	5.60
Submission Form	50	1	50	3.00	150.00
Site Visit Discussion Guide	* 120	1	120	1.00	120.00
Program Manager Interview	30	1	30	1.00	30.00
Direct Service Provider Interview	60	1	60	1.00	60.00
Evaluator Interview	30	1	30	1.00	30.00
Total	** 240		240		275.60

* For a total of 120 hours, each of the 30 site visits will include one-hour interviews with a program manager (30 hours), up to two 1-hour interviews with direct service providers (60 hours), and an 1-hour interview with an evaluator (30 hours).'

** The total number of respondents is 240 as comprised by the number of respondents for the pre-submission screening form (70), the submission form (50), and the site visit discussion guide (120).

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–12960 Filed 6–18–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA or the Council) will be holding the 64th full Council meeting in Jackson, Mississippi. Members will hear a panel presentation regarding *Ending the HIV Epidemic: A Plan for America* and will discuss possible recommendations regarding programs, policies, and research to promote effective, prevention, treatment and cure of HIV disease and AIDS. The meeting will be open to the public; a public comment session will be held during the meeting. Pre-registration is encouraged for members of the public who wish to attend the meeting and who wish to participate in the public comment session. Individuals who wish to attend the meeting and/or send in their public comment via email should send an email to Caroline Talev, MPA, at *Caroline.Talev@hhs.gov.* Pre-Registration must be complete by Monday, July 1, 2019.

DATES: The Council meeting is scheduled to convene on Monday, July 8 from 1:00 p.m. to 5:00 p.m. ET and Tuesday, July 9 from 9:00 to 3:00 p.m. ET (times are tentative and subject to change). The meeting agenda will be posted on the PACHA web page at *https://www.hiv.gov/federal-response/pacha/about-pacha.* Public attendance is limited to available space.

ADDRESSES: Hilton Jackson located at 1001 E County Line Road, Jackson, Mississippi 39211. The meeting can also be accessed through a live webcast on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, MPA, Public Health Analyst, Presidential Advisory Council on HIV/AIDS, 330 C Street SW, Room L106B, Washington, DC 20024; (202) 795–7622 or *Caroline.Talev@hhs.gov.* Additional information can be obtained by accessing the Council's page on the *HIV.gov* site at *www.hiv.gov/pacha.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996 and is currently operating

under the authority given in Executive Order 13811, dated September 29, 2017. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention and care of HIV infection and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House. The agenda for will be posted on *HIV.gov* at *https://www.hiv.gov/federal-response/pacha/about-pacha.*

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Caroline Talev at *Caroline.Talev@hhs.gov.* Due to space constraints, pre-registration for public attendance is advisable and can be accomplished by contacting Caroline Talev at *Caroline.Talev@hhs.gov* by close of business Monday, July 1, 2019. Members of the public will have the opportunity to provide comments during the meeting. Comments will be limited to two minutes per speaker. Any individual who wishes to participate in the public comment session must register with Caroline Talev at *Caroline.Talev@hhs.gov* by close of business Monday, July 1, 2019; registration for public comment will not be accepted by telephone. Individuals are encouraged to provide a written statement of any public comment(s) for accurate minute taking purposes. Public comment will be limited to two minutes per speaker. Any members of the public who wish to have printed material distributed to PACHA members at the meeting are asked to submit, at a minimum, 1 copy of the material(s) to Caroline Talev, no later than close of business on Monday, July 1, 2019.

Dated: May 31, 2019.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS, Deputy Director, Office of HIV/AIDS and Infectious Disease Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 2019–12986 Filed 6–18–19; 8:45 am]

BILLING CODE 4150–43–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; PAR Panel: AIDS and Related Research.

Date: July 8, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shalanda A. Bynum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, *bynumsa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–209: Next Generation Multipurpose Prevention Technologies.

Date: July 10, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, RKL II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–451–2796, *bdey@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences.

Date: July 11, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Ganesan Ramesh, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182 MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Intra- and Inter-personal Determinants and Behavioral Interventions Study Section.

Date: July 11–12, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Grand Seattle, 1400 6th Avenue, Seattle, WA 98101.

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: GI Mucosal Immunology and Pathology.

Date: July 11, 2019.

Time: 1:00 p.m. to 4:00 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: Meenakshisundar Ananthanarayanan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, Bethesda, MD 20892, 301–827–6281, *meena.ananthanarayanan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health Services Research on Minority Health and Health Disparities.

Date: July 12, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW, Washington, DC 20036.

Contact Person: Mark Allen Vosvick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, Bethesda, MD 20892, *mark.vosvick@nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; HIV Molecular Virology, Cell Biology, and Drug Development Study Section.

Date: July 15–16, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Community Health and Health Disparities.

Date: July 15, 2019.

Time: 12:00 p.m. to 4:30 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: Lauren Fordyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, Bethesda, MD 20892, 301–827–8269, *fordycelm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–NS18–018 Brain Initiative: Biology and Biophysics of Neural Stimulation.

Date: July 16, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, 301–237–1487, *lowss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Medical Imaging Investigations.

Date: July 17, 2019.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neural Basis of Brain and Neurodegenerative Disorders.

Date: July 17, 2019.

Time: 11:00 a.m. to 2:00 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: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, 301–760–8207, *schauweckerpe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Synthetic Psychoactive Drugs and Strategic Approaches to Counteract Their Deleterious Effects.

Date: July 17, 2019.

Time: 1:00 p.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: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Cancer Biology.

Date: July 17, 2019.

Time: 2:00 p.m. to 4:00 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: Amy L. Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dental, Microbiology and Oral Biology.

Date: July 17, 2019.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, RKL II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Baljit S. Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.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: June 14, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–13025 Filed 6–18–19; 8:45 am]

BILLING CODE 4140–01–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; Mobile Technologies Extending Reach of Primary Care for Substance-Use-Disorders (R41/R42/R43/R44—Clinical Trial Optional).

Date: June 14, 2019.

Time: 12:00 p.m. to 5:00 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: Ipolia R. Ramadan, 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 4228, MSC 9550, Bethesda, MD 20892, 301–827–5842, *ramadanir@mail.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; Evaluating the NIDA Standardized Research E-Cigarette in Risk Reduction and Related Studies (U01 Clinical Trial Optional).

Date: June 21, 2019.

Time: 11:00 a.m. to 2:00 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: Ipolia R. Ramadan, 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 4228, MSC 9550, Bethesda, MD 20892, 301–827–5842, *ramadanir@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Identification of Genetic and Genomic Variants by Next-Gen Sequencing in Non-human Animal Models (U01).

Date: June 28, 2019.

Time: 11:00 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: Ipolia R. Ramadan, 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 4228, MSC 9550, Bethesda, MD 20892, 301–827–5842, *ramadanir@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Device-Based Treatments for Substance Use Disorders (UH2/UH3) (Clinical Trial Optional).

Date: July 9, 2019.

Time: 10:00 a.m. to 11:00 a.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: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, (301) 827–5817, *mcguireso@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 14, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–13027 Filed 6–18–19; 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; PAR: Exosomes and Substance Use Disorders.

Date: July 8, 2019.

Time: 11:00 a.m. to 1:00 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: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal Rehabilitation Sciences.

Date: July 9, 2019.

Time: 10:00 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 (Virtual Meeting).

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; HIV Coinfections and HIV Associated Cancers Study Section.

Date: July 11, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, Bethesda, MD 20892, 301–451–5953, *tuoj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology.

Date: July 11–12, 2019.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Discovery & Validation of Novel Safe and Effective Pain Treatment.

Date: July 16, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Discovery & Validation of Novel Safe and Effective Pain Treatment.

Date: July 16, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Alzheimer's Disease and Its Related Dementias.

Date: July 16, 2019.

Time: 9:00 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 (Virtual Meeting).

Contact Person: Karen Nieves Lugo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, *karen.nieveslugo@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Prevention and Therapy.

Date: July 16, 2019.

Time: 10:00 a.m. to 5:00 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: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Neurophysiology.

Date: July 16, 2019.

Time: 1:00 p.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: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@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: June 14, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–13023 Filed 6–18–19; 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; Radiation Biodosimetry Assays and Devices (U01 Clinical Trial Not Allowed).

Date: July 10–11, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Thomas F. Conway, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G51, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, 240–507–9685, *thomas.conway@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: June 14, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–13026 Filed 6–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Tumor Microenvironment Study Section, June 24, 2019, 08:00 a.m. to June 25, 2019, 05:00 p.m., The Crowne Plaza Seattle, 1113 6th Avenue, Seattle, WA 98101 which was published in the **Federal Register** on May 28, 2019, 84 FR 24528.

The meeting will now be held at the Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104. The meeting date and time remain the same. The meeting is closed to the public.

Dated: June 14, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–13024 Filed 6–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0249]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0052

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: 1625–0052, Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges; 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 July 19, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0249] 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–2019–0249], and must be received by July 19, 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: 1625–0052.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (84 FR 13946, April 8, 2019) 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: Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges.

OMB Control Number: 1625–0052.

Summary: The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Such a tank, on an unmanned barge, 30 years old or older is subject to nondestructive testing once every ten years.

Need: Under Title 46 U.S.C. 3703, the Coast Guard is responsible for ensuring safe shipment of liquid dangerous cargoes and has promulgated regulations for certain barges to ensure the meeting of safety standards.

Forms: None.

Respondents: Owners of tank barges.

Frequency: Every 10 years.

Hour Burden Estimate: The estimated burden has decreased from 130 hours to 104 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: June 13, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–12919 Filed 6–18–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0253]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0042

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: 1625–0042, Requirements for Lightering of Oil and Hazardous Material Cargoes, and Advance Notice of Transfer; 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 July 19, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0253] 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–2019–0253], and must be received by July 19, 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: 1625–0042.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (84 FR 13945, April 8, 2019) 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 Lightering of Oil and Hazardous Material Cargoes, and Advance Notice of Transfer.

OMB Control Number: 1625–0042.

Summary: The information for this report allows the U.S. Coast Guard to provide timely response to an emergency and minimize the environmental damage from an oil or hazardous material spill. The information also allows the Coast Guard to control the location and procedures for lightering activities. It also provides advance notice of transfers at certain facilities.

Need: Section 3715 of Title 46 U.S.C. authorizes the Coast Guard to establish lightering regulations. Title 33 CFR 156.200 to 156.330 and 156.400 to 156.430 prescribes the Coast Guard regulations for lightering, including pre-arrival notice, reporting of incidents and operating conditions. Section 1225 of 33 U.S.C. authorizes the Coast Guard to prescribe advance notice of transfer regulations. Title 33 CFR 156.118 prescribe the regulations.

Forms: CG–4020, 4 Hour Advance Notice of Transfer.

Why Is Coast Guard Proposing A New Form: The Coast Guard proposes the use of a new form CG–4020—4 Hour Advance Notice of Transfer, because we believe that the form will improve communications and enhance information exchange accuracy. The optional form provides a facility representative with a simple means of complying with the existing advance notice of transfer requirements in 33 CFR 156.118.

Respondents: Owners, masters and agents of lightering vessels, and facility representatives.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 372 hours to 985 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: June 13, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–12920 Filed 6–18–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0039]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0061

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 approval for reinstatement without change, of the following collection of information: 1625–0061, Commercial Fishing Industry Vessel Safety Regulations. 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 July 19, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0039] 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–2019–0039], and must be received by July 19, 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: 1625–0061.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (84 FR 13938, April 8, 2019) 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: Commercial Fishing Industry Vessel Safety Regulations.

OMB Control Number: 1625–0061.

Summary: This information collection is intended to improve safety on board vessels in the commercial fishing industry. The requirements apply to those vessels and to seamen on them.

Need: Under the authority of 46 U.S.C. 6104, the U.S. Coast Guard has promulgated regulations in 46 CFR part 28 to reduce the unacceptably high level of fatalities and accidents in the commercial fishing industry. The rules allowing the collection also provide means of verifying compliance and enhancing safe operation of fishing vessels.

Forms: None.

Respondents: Owners, agents, individuals-in-charge of commercial fishing vessels, and insurance underwriters.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 6,617 hours to 4,832 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: June 13, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–12913 Filed 6–18–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0246]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0122

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: 1625–0122, Cargo Securing Manuals; 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 July 19, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0246] 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–2019–0246], and must be received by July 19, 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: 1625–0122.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (84 FR 13939, April 8, 2019) 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: Cargo Securing Manuals.

OMB Control Number: 1625–0122.

Summary: The information is used by the Coast Guard to review/approve new or updated cargo securing manuals, and to determine the proper response to a notification of a hazardous condition, including lost or jettisoned cargo.

Need: Sections 2103 and 3306 of Title 46 U.S.C. authorizes the Coast Guard to establish these regulations. Title 33 CFR 97 prescribes the Cargo Securing Manual regulations.

Forms: None.

Respondents: Owners, operators and masters of certain cargo vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 4,210 hours to 226 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: June 13, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–12916 Filed 6–18–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0042]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0033

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 approval for reinstatement, without change, of the following collection of information: 1625–0033, Display of Fire Control Plans for 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 July 19, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0042] 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–2019–0042], and must be received by July 19, 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: 1625–0033.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (84 FR 12630, April 2, 2019) 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: Display of Fire Control Plans for Vessels.

OMB Control Number: 1625–0033.

Summary: This information collection is for the posting or display of specific plans on certain categories of commercial vessels. The availability of these plans aid firefighters and damage control efforts in response to emergencies.

Need: Under 46 U.S.C. 3305 and 3306, the Coast Guard is responsible for ensuring the safety of inspected vessels and has promulgated regulations in 46 CFR parts 35, 78, 97, 109, 131, 169, and 196 to ensure that safety standards are met.

Forms: None.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 576 hours to 472 hours a year, due to a decrease in the estimated number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 13, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–12914 Filed 6–18–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0245]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0117

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: 1625–0117, Towing Vessels—Title 46 CFR Subchapter M; 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 July 19, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0245] 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–2019–0245], and must be received by July 19, 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: 1625–0117.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (84 FR 13942, April 8, 2019) 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: Towing Vessels—Title 46 CFR Subchapter M.

OMB Control Number: 1625–0117.

Summary: The Coast Guard uses the information to document that towing vessels meet inspection requirements of 46 CFR Subchapter M. The information aids in the administration and enforcement of the towing vessel inspection program.

Need: Under the authority of 46 U.S.C. 3306, the Coast Guard prescribed regulations for the design, construction, alteration, repair and operation of towing vessels. The Coast Guard uses the information in this collection to ensure compliance with the requirements.

Forms: None.

Respondents: Owners and operators of towing vessels, and third party organizations.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 181,669 hours to 151,219 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: June 13, 2019.

James D. Roppel,

Chief, Office of Information Management, U.S. Coast Guard.

[FR Doc. 2019–12915 Filed 6–18–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0077]

Agency Information Collection Activities: Customs-Trade Partnership Against Terrorism (C–TPAT) and the Trusted Trader Program; Correction

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; correction.

SUMMARY: On June 5, 2019, U.S. Customs and Border Protection (CBP) published a document in the **Federal Register** requesting comments from the public and affected agencies on Customs-Trade Partnership Against Terrorism (C–TPAT) and the Trusted Trader Program. That document contained an error in the subject heading. This document corrects the June 5, 2019 document to reflect the correct subject heading.

FOR FURTHER INFORMATION CONTACT: 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/.*

Background

On June 5, 2019, U.S. Customs and Border Protection (CBP) published in the **Federal Register** a document requesting comments from the public and affected agencies on Customs-Trade Partnership Against Terrorism (C–TPAT) and the Trusted Trader Program. 84 FR 26130. That document contained an error in the subject heading by referring to the ''Trusted Trader Program'' as the ''Trusted Traveler Program.'' This correction is being issued to clarify that the agency information collection relates to the Customs-Trade Partnership Against Terrorism (C–TPAT) and the Trusted Trader Program.

Correction

In the **Federal Register** of June 5, 2019, in the document at 84 FR 26130, in the first column, correct the subject heading to read:

Subject Heading: Agency Information Collection Activities: Customs-Trade Partnership Against Terrorism (C–TPAT) and the Trusted Trader Program.

Dated: June 13, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–12940 Filed 6–18–19; 8:45 am]

BILLING CODE 9111–14–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: 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.

DATES: Comments are encouraged and must be submitted (no later than July 19, 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** (84 FR 7098) on March 1, 2019, 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: 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.*

Estimated 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: June 13, 2019.

Seth D Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–12939 Filed 6–18–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0001; Internal Agency Docket No. FEMA–4433–DR]

Guam; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the territory of Guam (FEMA–4433–DR), dated May 7, 2019, and related determinations.

DATES: The declaration was issued May 7, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 7, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the territory of Guam resulting from Typhoon Wutip during the period of February 23 to February 25, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the territory of Guam.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the territory. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Tracy A. Haynes, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the territory of Guam have been designated as adversely affected by this major disaster:

The territory of Guam for Public Assistance.

All areas within the territory of Guam are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–12928 Filed 6–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1937]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Maricopa	City of Peoria (19–09–0336P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2019	040050
Pima	City of Tucson (18–09–2360P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, City Hall, 255 West Alameda Street, 10th Floor, Tucson, AZ 85701.	Planning and Development Services, Public Works Building, 201 North Stone Avenue, Tucson, AZ 85701.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 23, 2019	040076
Pima	Unincorporated Areas of Pima County (18–09–2360P).	The Honorable Richard Elias, Chairman, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 23, 2019	040073
California: Orange	City of Irvine (19–09–0114P).	The Honorable Christina L. Shea, Mayor, City of Irvine, 1 Civic Center Plaza, Irvine, CA 92606.	City Hall, 1 Civic Center Plaza, Irvine, CA 92606.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 20, 2019	060222
Florida: Clay	Unincorporated Areas of Clay County (19–04–2097P).	Ms. Diane Hutchings, Commissioner, Clay County Board of County Commissioners, P.O. Box 1366, Green Cove Springs, FL 32043.	Clay County, Public Works Department, 5 Esplanade Avenue, Green Cove Springs, FL 32043.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 30, 2019	120064
Michigan:						
Washtenaw	Township of Scio (19–05–0515P).	Mr. Jack Knowles, Supervisor, Township of Scio, 100 North 5th Avenue, Ann Arbor, MI 48104.	Township Hall, 827 North Zeeb Road, Ann Arbor, MI 48103.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 9, 2019	260537
Wayne	Township of Canton (18–05–5772P).	The Honorable Pat Williams, Township Supervisor, Township of Canton, Canton Municipal Complex, 1150 South Canton Center Road, Canton, MI 48188.	Municipal Complex, 1150 South Canton Center Road, Canton, MI 48188.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 30, 2019	260219
Nebraska: Washington.	City of Blair (18–07–0934P).	The Honorable Richard Hansen, Mayor, City of Blair, 218 South 16th Street, Blair, NE 68008.	City Hall, 218 South 16th Street, Blair, NE 68008.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 23, 2019	310228
New York: Westchester.	Village of Mamaroneck (19–02–0392P).	The Honorable Thomas A. Murphy, Mayor, Village of Mamaroneck, 123 Mamaroneck Avenue, Mamaroneck, NY 10543.	Building Inspector, Village Hall, 3rd Floor, 169 Mount Pleasant Avenue, Mamaroneck, NY 10543.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 18, 2019	360916
Texas: Dallas	City of Mesquite (19–06–0203P).	The Honorable Stan Pickett, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	City Engineering Services, 1515 North Galloway Avenue, Mesquite, TX 75185.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 27, 2019	485490

[FR Doc. 2019–12943 Filed 6–18–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0038]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition To Remove the Conditions on Residence

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 revision 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 August 19, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0038 in the body of the letter, the agency name and Docket ID USCIS–2009–0008. 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–2009–0008;

(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 Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2009–0008 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:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Remove the Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–751 USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected on Form I–751 is used by U.S. Citizenship and Immigration Services (USCIS) to verify the alien's status and determine whether he or she is eligible to have the conditions on his or her status removed. Form I–751 serves the purpose of standardizing requests for benefits and ensuring that basic information required to assess eligibility is provided by petitioners.

USCIS also collects biometric information from the alien to verify their identity and check or update their background information.

(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–751 is 153,000 and the estimated hour burden per response is 4.57 hours; the estimated total number of respondents for the information collection biometrics is 306,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,057,230 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 $19,698,750.

Dated: June 13, 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. 2019–12936 Filed 6–18–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0005]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Family Unity Benefits

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 July 19, 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 1615–0005 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 Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on November 5, 2018, at 83 FR 55389, allowing for a 60-day public comment period. USCIS did receive 1 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–2009–0021 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 Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–817; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 236.14 and 245a.33.

(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–817 is approximately 1,000 and the estimated hour burden per response is 2 hours per response; and the estimated number of respondents providing biometrics is 1,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,170 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 $122,500.

Dated: June 13, 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. 2019–12938 Filed 6–18–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0054]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice of Naturalization Oath Ceremony

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 July 19, 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 1615–0054 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 Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on February 1, 2019, at 84 FR 1188, allowing for a 60-day public comment period. USCIS received 5 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–2006–0055 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:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Naturalization Oath Ceremony.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–445; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information furnished on Form N–445 refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and

render an appropriate decision on the application. USCIS will use this information to determine if any changes to the respondent's prior statements affect the decisions the agency has made in regards to the respondent's ability to be naturalized.

(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–445 is 741,541 and the estimated hour burden per response is .25 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 185,385 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: June 14, 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. 2019–13017 Filed 6–18–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–28]

Notice of Emergency Approval of an Information Collection: Housing Counseling Training Grant Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, HUD has requested from the Office of Management and Budget (OMB) emergency approval of the information collection described in this notice.

DATES: *Comments Due Date:* August 5, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Housing Counseling Training Grant Program.

OMB Approval Number: 2502–0567.

Type of Request: Emergency.

Form Number: SF–424, Application for Federal Assistance; HUD–92910, Housing Counseling Training Charts; HUD–2880, Applicant/Recipient Disclosure/Update Report.

Description of the need for the information and proposed use: Eligible organizations submit information to HUD through *Grants.gov* when applying for grant funds to provide housing counseling training to housing counselors. HUD uses the information collected to evaluate applicants competitively and then select qualified organizations to receive funding that supplement their housing counseling training program. Post-award collection, such as quarterly reports, will allow HUD to evaluate grantees' performance.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 24.

Estimated Number of Responses: 40.

Frequency of Response: One-time application and quarterly reports.

Average Hours per Response: 34.50.

Total Estimated Burdens: 1,380.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 13, 2019.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–13019 Filed 6–18–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N053; FXES11140800000–190–FF08ECAR00]

Habitat Conservation Plan for the Coastal California Gnatcatcher; Categorical Exclusion for 93–129 Ltd, Orange County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from 93–129 Ltd for a 10-year incidental take permit for the coastal California gnatcatcher pursuant to the Endangered Species Act. We are requesting comments on the permit application and on our preliminary determination that the applicant's accompanying proposed habitat conservation plan qualifies as low effect, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in our environmental action statement and associated low-effect screening form, which are also available for public review.

DATES: Written comments should be received on or before July 19, 2019.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods. Please include ''93–129 Ltd'' at the beginning of your comments.

- *U.S. Mail:* Field Supervisor, Carlsbad Fish and Wildlife Office, U.S.

Fish and Wildlife Service, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.

• *Fax:* Field Supervisor, 760–431–9624.

• *Email: fw8cfwocomments@fws.gov.*

Obtaining Documents: You may obtain copies of the documents by the following methods:

• *Internet: https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html.*

• *Telephone:* 760–431–9440.

• *U.S. Mail:* Carlsbad Fish and Wildlife Office (address above).

• *In-Person:* You may examine the documents by appointment during regular business hours at the Carlsbad Fish and Wildlife Office (address above). Please call to make an appointment (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service (FRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from 93–129 Ltd (applicant) for a 10-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the anticipated ''take'' of the threatened coastal California gnatcatcher (*Polioptila californica californica;* gnatcatcher). The applicant proposes to grade, subdivide, and construct infrastructure for four estate custom home parcels on the approximately 50-acre parcel (Tentative Parcel Map 93–129) in Laguna Niguel, California. The proposed project will impact an estimated 4.3 acres of coastal sage scrub and up to two pairs of gnatcatchers. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the applicant's proposed habitat conservation plan (HCP). On June 25, 2007, the Service issued a 10-year incidental take permit for the subject project. Implementation of the project was delayed and the permit expired on June 25, 2017.

We are requesting comments on the permit application and on our preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The basis for this determination is discussed in our environmental action statement and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the ESA and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. ''Take'' is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct'' (16 U.S.C. 1538). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed species. ''Incidental taking'' is defined by the ESA implementing regulations as taking that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The project is located on a 50-acre property in the City of Laguna Niguel in Orange County, California (Tentative Parcel Map 93–129). The applicant requests a 10-year permit under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking gnatcatcher as a result of permanent impacts to 4.3 acres of coastal sage scrub that the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's activities associated with the grading, subdivision, and construction of four estate custom home parcels.

The applicant proposes to mitigate permanent impacts to 4.3 acres of occupied gnatcatcher habitat through the creation and restoration of 10.61 acres of coastal sage scrub and conservation of 12.8 acres of coastal sage scrub (including the created and restored habitat). The conserved habitat will be managed in perpetuity.

The applicant's proposed HCP also contains measures to minimize the effects of construction activities on the gnatcatcher, including the following: Oversight of project activities by a biological monitor; fencing the project limits; implementing an erosion control plan to avoid and minimize degradation of adjacent native habitat; removing invasive plant species from the property; minimizing the spillage of project lighting into the conserved area; providing educational brochures to residents on the responsibilities associated with living near a conserved area; removing previously used dirt access roads to reduce illegal trespassing into natural areas; and monitoring and reporting to the Service upon project completion.

Proposed Action and Alternatives

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the gnatcatcher. If we approve the permit, take of gnatcatcher would be authorized for the applicant's activities associated with the implementation of the 93–129 project. In the proposed HCP, the applicant considers two alternatives. Under the No Action Alternative, no permit would be issued and incidental take of the gnatcatcher resulting from habitat loss would occur, and no long-term protection and management would be afforded to the species. The No Action Alternative would not meet the primary goal of the proposed Project, which is to construct residential homes. Under the Parcel by Parcel Alternative, each individual parcel owner would conduct grading and slope stabilization activities. This alternative would necessitate the construction of an additional road immediately adjacent to the coastal sage scrub habitat conservation area on the north side of the property's ridgeline and would significantly increase the impacts to coastal sage scrub habitat.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the HCP and issuance of an incidental take permit qualify for categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215), and that the HCP qualifies as a low-effect plan as defined by the Habitat Conservation Planning Handbook (December 2016).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

(1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

(2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and

(3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the ESA by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of the gnatcatcher.

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. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Scott Sobiech,

Acting Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2019–12953 Filed 6–18–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900 253G]

Comanche Nation; Amendment to Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the amendment to the Comanche Indian Tribe Liquor Control Ordinance. The liquor control ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol on Comanche trust lands in conformity with the laws of the State of Oklahoma where applicable and necessary. The amendment does not become effective until published in the **Federal Register**.

DATES: This ordinance shall become effective on July 19, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Lovin, Tribal Government Officer, Southern Plains Regional Office, Bureau of Indian Affairs, Post Box 368, Anadarko, Oklahoma 73005, telephone: (405) 247–1534 or (405) 247–6673, fax: (405) 247–1534; or Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS–4513–MIB, Washington, DC 20240, telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 5886, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. On April 7, 2001, the Comanche Business Committee duly adopted the Comanche Indian Tribe Liquor Control Ordinance. The Comanche Tribe Liquor Control Ordinance was published in the **Federal Register** on October 25, 2001 at 66 FR 54022.

This notice is published in accordance with the delegated authority by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Comanche Nation Business Committee duly adopted the amendment to the Comanche Tribe Liquor Control Ordinance by Resolution 89–18 on May 17, 2018.

Dated: May 17, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

The Comanche Indian Tribe Liquor Control Ordinance, Article VII. Taxes, Section (1), as amended, shall read as follows:

Article VII, Taxes, Section (1)

Section (1) Tax. There is hereby levied and shall be collected a tax on each wholesale and retail sale of Alcohol Beverages on Tribal land in the amount of one percent (1%) of the retail sales and an additional (5%) on-Premise Poured Liquor Tax, respectively, to be added to the wholesale and retail sales price. All taxes from the sale of such Alcohol Beverages shall be paid into a separate account under exclusive authority of the Tax Commission. This tax may be adjusted as requested by the Tax Commission and approved by the Business Committee.

[FR Doc. 2019–12942 Filed 6–18–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0155]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Leases and Permits

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 to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 19, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Mailbox #44, Albuquerque, NM 87104; or by email to *Sharlene.RoundFace@bia.gov.* Please reference OMB Control Number

1076–0155 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, Ms. Sharlene Round Face by email at *Sharlene.RoundFace@bia.gov,* or by telephone at (505) 563–5258. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published April 19, 2019 (84 FR 16529). No comments were received.

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. 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: Generally trust and restricted land may be leased by Indian land owners, with the approval of the Secretary of the Interior, except when specified by statute. Submission of this information allows BIA to review applications for obtaining, modifying and assigning leases and permits of land that the United States holds in trust or restricted status for individual Indians and Indian Tribes. The information is used to determine approval of a lease, amendment, assignment, sublease, mortgage or related document. A response is required to obtain or retain a benefit.

Title of Collection: Leases and Permits.

OMB Control Number: 1076–0155.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individual Indians and Indian Tribes seeking to lease their trust or restricted land and businesses that lease trust and restricted land.

Total Estimated Number of Annual Respondents: 99,340.

Total Estimated Number of Annual Responses: 99,340.

Estimated Completion Time per Response: Varies from 15 minutes to 2 hours.

Total Estimated Number of Annual Burden Hours: 81,899.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: In general, once per approval per lease. Some collections occur upon request for modification or assignment or upon a trespass violation, which occur, on average, fewer than once per lease. Additionally, rent payments occur, on average, once per month.

Total Estimated Annual Nonhour Burden Cost: $1,813,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–13018 Filed 6–18–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–28182; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before June 1, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by July 5, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 1, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

ARKANSAS

Garland County

Hot Springs Central Avenue Historic District (Boundary Decrease), Central Ave., from Prospect to Park Sts., Hot Springs, BC100004164

LOUISIANA

East Baton Rouge Parish, Courthouse Office Building

(Non-Residential Mid-Century Modern Architecture in Baton Rouge, 1945–1975 MPS), 233 St. Ferdinand St., Baton Rouge, MP100004150

St. Tammany Parish

Claiborne Cottage Hotel, 19130 Rogers Ln., Covington, SG100004152

MICHIGAN

Monroe County

St. Mary's Academy Historic District, (City of Monroe MRA), 610 W Elm Ave., Monroe, 82005047

Oakland County

Oxford Downtown Historic District, Washington St./MI–24 and Burdick St., Oxford, SG100004158

MISSISSIPPI

Lincoln County

Ruston Power and Light Plant, 300 E Mississippi Ave., Ruston, SG100004151

NEW YORK

Onondaga County

Whedon-Schumacher House, 365 W Onondaga St., Syracuse, SG100004182

Rockland County

Pig Knoll School, 584 NY 306, Pomona, SG100004183

OKLAHOMA

Garfield County

Enid Downtown Historic District (Boundary Increase), Roughly bounded by Maple Ave., 2nd St., Cherokee Ave., and Adams St., Enid, BC100004167

Kay County

Marland, Charlotte, House, 919 E Grand Ave., Ponca City, SG100004168
First Presbyterian Church, 1505 E Grand Ave., Ponca City, SG100004169
Cleary, Jack and Helen, House, 13 Hillcrest Dr., Ponca City, SG100004170
Marland Estate, Inc. Gatehouse, 747 N 14th St., Ponca City, SG100004171
Ponca City Milling Company Elevator, 114 W Central Ave., Ponca City, SG100004172
Ponca City Municipal Airport Hangar, 2231 Waverly St., Ponca City, SG100004173
Ponca City Power Plant, 1420 N Union St., Ponca City, SG100004174
Temple Emanuel, 1201 E Highland Ave., Ponca City, SG100004175

Muskogee County

First Church of Christ, Scientist, 302 N 7th St., Muskogee, SG100004176
Hotel Muskogee, 26 W Broadway St., Muskogee, SG100004177

Oklahoma County

Capitol Hill Commercial Historic District, 100–400 SW 25th St./W, Commercial Ave., Oklahoma City, SG100004178
Stonegate Elementary School, 2525 NW 112th St., Oklahoma City, SG100004179

OREGON

Multnomah County

Amundsen, Roy E. and Hildur L., House, 477 NW Overlook Ave., Gresham, SG100004161

PENNSYLVANIA

Cambria County

Ebensburg Historic District, Bounded Roughly by Highland Ave., West St., Sugar St., and Triumph St., Ebensburg, SG100004163

VERMONT

Caledonia County

Lower Waterford Congregational Church, (Religious Buildings, Sites and Structures in Vermont MPS), 63 Lower Waterford Rd., Waterford, MP100004181

WISCONSIN

Milwaukee County

Jones-Hill House, 2463 N Palmer St., Milwaukee, SG100004165

A request for removal has been made for the following resource:

ARIZONA

Coconino County

Mormon Lake Lookout Cabin, (National Forest Fire Lookouts in the Southwestern Region TR), Coconino National Forest, Mormon Lake vicinity, OT87002459

Additional documentation has been received for the following resources:

MICHIGAN

Midland County

Greene, George, House, (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 115 W Sugnet, Midland, AD89001441

OKLAHOMA

Garfield County

Enid Downtown Historic District, Roughly bounded by Maple Ave., 2nd St., Cherokee Ave., and Adams St., Enid, AD07001265

OREGON

Multnomah County

Irvington Historic District, Roughly bounded by NE Fremont, NE 27th Ave., NE Broadway, NE 7th Ave., Portland, AD10000850

PENNSYLVANIA

Allegheny County

Heinz, H.J., Company, Roughly bounded by Chestnut St., River Ave., S. Canal St., Progress St. and Heinz, modern Manufacturing Facilities, Pittsburgh, AD02000774

Nomination submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

CALIFORNIA

San Bernardino County

Vulcan Mine Historic District, 5.28 mi, E of Kelbaker Rd., on Vulcan Mine Rd., Kelso vicinity, SG100004180

Authority: Section 60.13 of 36 CFR part 60.

Dated: June 3, 2019.

Christopher Hetzel,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2019–12932 Filed 6–18–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2018–0067]

Commercial Renewable Energy Transmission on the Outer Continental Shelf Offshore New York and New Jersey; Notice of Proposed Grant Area and Request for Competitive Interest

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Public notice.

SUMMARY: The purpose of this public notice is to: Describe the New York and New Jersey Ocean Grid proposed by Anbaric Development Partners, LLC (ADP); determine if there is competitive interest in a right-of-way (ROW) grant for renewable energy purposes in the area identified in this notice; and solicit public input regarding the proposal, its potential environmental consequences, and other uses of the area in which the proposal would be located.

DATES: If you are submitting an indication of interest in acquiring a ROW grant for the area ADP requested, your submission must be sent by mail, postmarked no later than July 19, 2019 for your submission to be considered. If you are providing comments or other information, you may send them by mail, postmarked by this same date, or you may submit them through the Federal Rulemaking Portal at *http://www.regulations.gov,* also by this same date.

ADDRESSES: If you are submitting an indication of competitive interest for a ROW grant, please submit it by mail to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, Mailstop: VAM–OREP, Sterling, VA 20166. Submissions must be postmarked by July 19, 2019 to be considered by BOEM in determining whether there is competitive interest. In addition to a paper copy of your submission, include an electronic copy on a compact disc or portable storage device. BOEM will list the parties that submit indications of competitive interest in the area ADP requested on the BOEM website after the 30-day comment period has closed.

If you are submitting comments and other information concerning the proposed grant area, you may use either of the following two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry entitled, ''Enter Keyword or ID,'' enter BOEM–2018–0067 and then click ''search.'' Follow the instructions to

submit public comments and view supporting and related materials available for this notice.

2. Alternatively, you may submit comments by mail to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, Mailstop: VAM–OREP, Sterling, VA 20166.

If you wish to protect the confidentiality of your submissions or comments, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this notice entitled, ''Privileged or Confidential Information.'' BOEM will post all comments on *regulations.gov* unless labeled as confidential. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Casey Reeves, Project Coordinator, BOEM, Office of Renewable Energy Programs, 45600 Woodland Road, Mailstop: VAM–OREP, Sterling, VA 20166, (703) 787–1671.

SUPPLEMENTARY INFORMATION: On April 30, 2018, the Bureau of Ocean Energy Management (BOEM) received an application from ADP, later revised on June 22, 2018, for a ROW grant on the Outer Continental Shelf (OCS) offshore New York and New Jersey. ADP's proposed project, the New York and New Jersey Ocean Grid (NY/NJ Ocean Grid), would entail the construction, installation, and operation of an offshore transmission system of approximately 185 nautical miles of submarine cable on the OCS and approximately 118 nautical miles of submarine cable on State submerged lands to deliver offshore wind energy generation to the onshore electric grid. The NY/NJ Ocean Grid also includes the siting of several offshore collector platforms (OCPs), each connected to one or more high voltage submarine cables to onshore points of interconnection. Each proposed OCP would be designed to handle 800 to 1,200 MW of offshore wind energy generation with the ability to connect multiple offshore wind projects and accommodate phased development within BOEM's designated Wind Energy Areas (WEAs).

BOEM is publishing this Request for Competitive Interest (RFCI) pursuant to subsection 8(p)(3) of the OCS Lands Act (43 U.S.C. 1337(p)(3)) and 30 CFR 585.306–307. Subsection 8(p)(3) of the OCS Lands Act requires that OCS renewable energy leases, easements, and ROWs be issued ''on a competitive basis unless the Secretary determines after public notice of a lease, easement, or right-of-way that there is no competitive interest.'' The regulations at 30 CFR 585.306–307 set forth BOEM's procedures for making such determinations for ROW grants. This RFCI provides public notice of the proposed ROW grant area that ADP requested, and invites the submission of indications of competitive interest. BOEM will consider the responses to this public notice to determine whether competitive interest exists for the area ADP requested, as required by 43 U.S.C. 1337(p)(3). Parties wishing to obtain a grant for the area that ADP requested should submit detailed and specific information, as described in the section entitled, ''Required Indication of Interest Information.'' This announcement also requests interested and affected parties to comment and provide information about site conditions and existing and future uses of the area identified in this notice that would be relevant to the proposed project or its impacts. BOEM has described the type of information that it is requesting in the section entitled, ''Requested Information from Interested or Affected Parties.''

Purpose of the RFCI

Responses to this public notice will allow BOEM to determine, pursuant to 30 CFR 585.306, whether or not there is competitive interest in acquiring the ROW grant area ADP requested, as described in this notice. In addition, this notice provides an opportunity for interested stakeholders to provide comments on the ADP ROW request, including information relating to potential environmental consequences from the proposed project on existing geological, geophysical, and biological (habitat and species) conditions, as well as any potential impacts to existing ocean users (*e.g.,* fishing industry and mariners) in the area described in this notice. If, in response to this notice, BOEM receives one or more indications of competitive interest from qualified entities that wish to transmit renewable energy in the proposed ADP ROW grant area, it may decide to move forward with the ROW grant issuance process using competitive procedures pursuant to 30 CFR 585.308. However, if BOEM receives no qualified competing indications of interest, BOEM may decide to move forward with the ROW grant issuance process using the noncompetitive procedures contained in 30 CFR 585.309.

Background

Statutory Authorization

Under OCSLA subsection 8(p)(1)(C), the Secretary of the Interior (the Secretary) may issue leases or ROWs for activities that produce or support production, transportation, or transmission of energy from sources other than oil or gas, including renewable energy sources. Section 8(p) also requires the Secretary to issue any necessary regulations to carry out this authority. Regulations were issued for this purpose on April 29, 2009, and are codified in BOEM regulations at 30 CFR part 585. The Secretary has delegated the authority to issue leases, easements, and ROWs to the Director of BOEM.

Determination of Competitive Interest and Granting Process

BOEM will evaluate indications of competitive interest in the ROW grant area ADP requested to install cables for the transmission of renewable electricity, and will determine whether there is competitive interest in accordance with 30 CFR 585.307. At the conclusion of the comment period for this public notice, BOEM will review the submissions received to ensure that they are complete and that the submitters are qualified to hold a ROW grant under 30 CFR 585.106 and 107, and then will make its competitiveness determination.

BOEM may find that competitive interest exists if it receives a proposal to acquire an OCS ROW grant that cannot coexist with ADP's proposed activities within its requested grant corridor. In rendering its determination regarding competitive interest, BOEM will analyze whether the proposal by ADP would prevent a known competitor's subsequent, or parallel, use of the area for renewable energy transmission. Under BOEM's regulations at 30 CFR 585.302(b)(1), the rights accorded in a ROW grant do not prevent the issuance of other rights in the same area, provided that any subsequent rights BOEM grants in the area of a previously issued ROW grant do not unreasonably interfere with activities approved under the previously-issued ROW grant. Consequently, if you have an interest in obtaining a commercial lease for generating offshore wind energy in the area of ADP's ROW grant request, it is not necessary to submit indications of interest in response to this notice to protect your interest in obtaining a lease. This is because BOEM could issue a lease for generating offshore wind

energy in the same area as the ROW, so long as the lease activities do not unreasonably interfere with BOEM-approved activities on the ROW grant.

If BOEM determines that competitive interest exists, it may decide to proceed with the competitive granting process outlined in 30 CFR 585.308. If BOEM determines that there is no competitive interest in the proposed grant area, it will publish in the **Federal Register** a notice that there is no competitive interest. At that point, BOEM may decide to proceed with the noncompetitive grant issuance process pursuant to 30 CFR 585.306(b). If BOEM issues a ROW grant to ADP, ADP would need to conduct any construction activities on the ROW pursuant to a BOEM-approved General Activities Plan (GAP) pursuant to 30 CFR 585.600(c).

Whether BOEM proceeds with the competitive or noncompetitive grant process, it will consult and coordinate with relevant Federal agencies, affected tribes, and affected state and local governments in issuing a grant; developing grant terms and conditions; and deciding whether to approve, disapprove, or approve with modifications any activities proposed in a GAP.

Environmental Review and Permitting Process

Prior to issuing any ROW grant or authorizing any construction activities on that ROW grant, BOEM would conduct a site-specific environmental review under the National Environmental Policy Act, during which it would act as the lead agency, coordinate with cooperating or consulting Federal agencies, and provide additional opportunities for public comment. BOEM would also participate in associated consultations under the Coastal Zone Management Act, the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act, the National Historic Preservation Act (NHPA), Executive Order 13175, and other laws, regulations, and authorities determined necessary throughout the process.

Description of the Grant Request

The area for which ADP has requested a ROW grant is located on the OCS off the coasts of New York and New Jersey. A ROW grant corridor, in which a cable, pipeline, or associated facility is located, is generally 200 feet in width centered on the cable and includes areas for the associated facilities limited to the area reasonably necessary for the OCP's or other necessary accessory facilities (30 CFR 585.301). The requested grant corridor crosses portions of the following OCS blocks:

Protraction No.	Lease block	Protraction No.	Lease block
NK18–12	6457	NJ18–03	6001
NK18–12	6458	NJ18–03	6002
NK18–11	6540	NJ18–03	6003
NK18–12	6501	NJ18–03	6004
NK18–12	6505	NJ18–03	6053
NK18–12	6506	NJ18–03	6054
NK18–12	6507	NJ18–03	6055
NK18–12	6508	NJ18–03	6104
NK18–12	6509	NJ18–03	6105
NK18–12	6551	NJ18–03	6152
NK18–12	6552	NJ18–03	6153
NK18–12	6555	NJ18–03	6154
NK18–12	6558	NJ18–03	6155
NK18–12	6559	NJ18–02	6240
NK18–12	6560	NJ18–03	6201
NK18–12	6561	NJ18–03	6202
NK18–12	6562	NJ18–03	6203
NK18–12	6601	NJ18–02	6289
NK18–12	6602	NJ18–02	6290
NK18–12	6604	NJ18–03	6251
NK18–12	6605	NJ18–02	6338
NK18–12	6610	NJ18–02	6339
NK18–12	6611	NJ18–02	6340
NK18–12	6612	NJ18–02	6387
NK18–12	6652	NJ18–02	6388
NK18–12	6653	NJ18–02	6389
NK18–12	6654	NJ18–02	6437
NK18–12	6661	NJ18–02	6438
NK18–12	6662	NJ18–02	6487
NK18–12	6702	NJ18–02	7078
NK18–12	6703	NJ18–02	7079
NK18–12	6704	NJ18–02	7128
NK18–12	6711	NJ18–02	7129
NK18–12	6712	NJ18–05	6028
NK18–12	6713	NJ18–05	6029
NK18–12	6714	NJ18–05	6078
NK18–12	6715	NJ18–05	6079
NK18–12	6752	NJ18–02	6831
NK18–12	6753	NJ18–02	6832
NK18–12	6754	NJ18–02	6833
NK18–12	6764	NJ18–02	6881
NK18–12	6765	NJ18–02	6882
NK18–12	6802	NJ18–02	6930
NK18–12	6803	NJ18–02	6931
NK18–12	6804	NJ18–02	6979
NK18–12	6851	NJ18–02	6980

Protraction No.	Lease block	Protraction No.	Lease block
NK18–12	6852	NJ18–02	6981
NK18–12	6853	NJ18–02	7029
NK18–12	6854	NJ18–02	7030
NK18–11	6939	NJ18–02	6537
NK18–11	6940	NJ18–02	6538
NK18–12	6901	NJ18–02	6585
NK18–12	6902	NJ18–02	6586
NK18–11	6989	NJ18–02	6587
NK18–11	6990	NJ18–02	6635
NK18–12	6951	NJ18–02	6636
NK18–11	7039	NJ18–02	6684
NK18–11	7040	NJ18–02	6685
NK18–11	7089	NJ18–02	6686
NK18–11	7090	NJ18–02	6733
NK18–12	7051	NJ18–02	6734
NK18–11	7140	NJ18–02	6735
NK18–12	7101	NJ18–02	6781
NK18–12	7102	NJ18–02	6782
NK18–12	7103	NJ18–02	6783
		NJ18–02	6784

BOEM requests public comments and indications of competitive interest in the ROW grant area identified by this notice. The centerline of the eventual ROW grant may be adjusted based on the results of future surveys or new information obtained from stakeholder outreach and public comments, but the proposed project, if approved, is expected to occur within the listed lease blocks.

Map of the Area

You can find a map of the area proposed for a ROW grant at the following URL: *https://www.boem.gov/Renewable-Energy-Program/State-Activities/Regional-Proposals.aspx.* A large-scale map of the RFCI area showing boundaries of the area is available from BOEM upon request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Multiple Use Considerations

BOEM has identified the following multiple use issues through early coordination and outreach efforts:

Department of Defense

The Department of Defense (DoD) conducts offshore testing, training, and operations on the Atlantic above the OCS. BOEM would consult with the DoD on any activities proposed on the requested ROW grant to ensure that they are compatible with DoD activities on the Atlantic above the OCS.

Shipping Traffic

Shipping traffic occurs within the vicinity of the requested ROW grant. BOEM will coordinate with the United States Coast Guard to avoid or minimize potential conflicts.

Protected Resources

Several species of birds, marine mammals, sea turtles, and fish listed as threatened or endangered under the ESA may occur permanently or seasonally in the proposed ROW grant area. Protection of such species falls within the jurisdiction of the United States Fish and Wildlife Service (FWS) or the NOAA National Marine Fisheries Service (NMFS). The proposed route would cross North Atlantic right whale habitat and would therefore likely require consultation with NMFS to ensure adequate protection through mitigation measures. In addition to ESA-listed species, the area likely contains, seasonally or permanently, seabirds protected under the Migratory Bird Treaty Act and marine mammals protected under the Marine Mammal Protection Act. BOEM will coordinate with the FWS and NMFS to avoid, mitigate, and/or minimize potential impacts to the resources under their jurisdiction.

Existing Infrastructure

The proposed ROW grant crosses international fiber optic telecommunications cable. In order to construct its proposed project, ADP is expected to establish crossing agreements with their owners and ensure that installation activities do not cause any disruption to service, maintenance, or decommissioning, or otherwise damage those pipelines and cables identified by the affected parties.

Fisheries and Essential Fish Habitat

Portions of the area identified are used by the commercial and recreational fishing industry, and NMFS has designated essential fish habitat (EFH) in much of the area. Consultations with NMFS may be required to identify measures to avoid and minimize impacts on EFH during the siting and installation phases of development.

Required Indication of Competitive Interest Information

If you intend to submit an indication of competitive interest for a ROW grant for the area identified in this notice for the purpose of transmitting electricity generated from a renewable source, you must provide the following:

(1) Documentation demonstrating that you are legally qualified to hold a lease or grant in accordance with the requirements of 30 CFR 585.106 and 585.107(c). Examples of the documentation appropriate for demonstrating your legal qualifications and related guidance can be found in Chapter 2 and Appendix B of the *BOEM Renewable Energy Framework Guide Book* available at: *http://www.boem.gov/REnGuidebook03/.* The documents you provide to demonstrate your qualifications to hold a lease or grant will be placed in a file kept by BOEM that may be made available for public review. If you wish that any part of your legal qualification documentation be kept confidential, clearly identify what should be kept confidential, and submit it under separate cover (see ''Protection of Privileged or Confidential Information Section,'' below).

(2) Documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining, and decommissioning the facilities described in (4) below in accordance with the requirements of 30 CFR 585.107(a). Guidance regarding the documentation required to demonstrate

your technical and financial qualifications can be found at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/QualificationGuidelines-pdf.aspx.* Any documentation you submit to demonstrate your legal, technical, and financial qualifications must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file on a storage media device to be an acceptable format for an electronic copy.

(3) A statement that you wish to acquire a renewable energy ROW grant for the proposed grant corridor ADP requested for the NY/NJ Ocean Grid project, and a description of how your proposal would interfere with, or suffer interference from, the proposed project. You should submit any request for a ROW grant that does not conflict with the proposed grant corridor separately pursuant to 30 CFR 585.305.

(4) A description of your objectives, including:

- Devices and infrastructure involved (if your project would require the use of bottom-founded structures such as booster stations, please indicate where those platforms would be located);
- Anticipated capacity;
- How the project would support renewable energy; and
- A statement that the proposed activity conforms with applicable state and local energy planning requirements, initiatives, or guidance.

(5) A schedule of proposed activities, including those leading to commercial operations.

(6) Available and pertinent data and information concerning environmental conditions in the area, including any energy and resource data and information used to evaluate the area.

Further guidance for the qualifications process and requirements is available at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/QualificationGuidelines-pdf.aspx.* Your complete submission, including the items identified in (1) through (6) above, must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a compact disc (CD) or portable storage device to be an acceptable format for submitting an electronic copy. Where applicable, you should submit spatial information in a format compatible with ArcGIS in a geographic coordinate system (NAD 83).

It is critical that you provide a complete submission of competitive interest so that BOEM may consider your submission in a timely manner. If BOEM reviews your submission and determines that it is incomplete, BOEM will inform you of this determination and describe the information necessary in order for BOEM to deem your submission complete. If BOEM determines your second submission is also insufficient or that it has not received the requested information by a date BOEM specified, we reserve the right to deem your submission invalid. In such a case, BOEM would not consider your submission.

Requested Information From Interested or Affected Parties

BOEM is also requesting specific and detailed comments from interested or affected parties regarding the following:

(1) The current and future need for a regional transmission system in the proposed area, including utility, available grid connections, economics, efficiency or other relevant metrics.

(2) Whether BOEM should develop a broader strategic approach for regional transmission cables in which BOEM considers limits on the number and location of future ROW grants or, alternatively, processes unsolicited ROW grant requests on a case-by-case basis as it receives them from industry.

(3) Conditions to make such a network compatible with offshore wind projects.

(4) Offshore wind project developer interest in use of regional transmission networks on the OCS.

(5) Geological and geophysical conditions (including bottom and shallow hazards) in the area described in this notice.

(6) Known archaeological, historic or cultural resource sites on the seabed in the area described in this notice.

(7) Multiple uses of the area described in this notice, including navigation (in particular, commercial and recreational vessel usage) and commercial and recreational fisheries.

(8) Potential impacts to existing communication cables.

(9) DoD operational, training, and testing activities (surface and subsurface) in the area described in this notice that may be impacted by the proposed project.

(10) Potential future uses of the area.

(11) Advisable setback distance for other offshore structures, including other cables, and renewable energy structures.

(12) The potential risk to the proposed offshore transmission cable posed by anchors or other hazards, and burial depths that would be required to mitigate such risks.

(13) Relevant environmental and socioeconomic information.

Protection of Privileged or Confidential Information

Freedom of Information Act

BOEM will not disclose privileged or confidential information that you submit if it qualifies for Freedom of Information Act (FOIA) exemption for trade secrets and commercial or financial information, provided that you clearly label the submission with ''Contains Confidential Information'' and request that BOEM treat it as confidential. Please consider submitting such information as a separate attachment.

BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such confidential or privileged information. Additionally, BOEM will not treat as confidential (1) the legal title of the nominating entity (for example, the name of your company), or (2) the list of whole or partial blocks that you are nominating. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Personal Identifying Information

BOEM does not consider anonymous comments; please include your name and address as part of your submittal. You should be aware that your entire comment, including your name, address, and your personal identifying information, may be made publicly available at any time. All submissions from identified individuals, businesses and organizations will be available for public viewing on *regulations.gov*. In order for BOEM to withhold from disclosure your personal identifying information, you must identify any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury or other harm.

National Historic Preservation Act (16 U.S.C. 470w–3(a))

BOEM is required, after consultation with the Secretary, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate as confidential information

that falls under Section 304 of the NHPA.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2019–12962 Filed 6–18–19; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–571]

U.S. Trade and Investment With Sub-Saharan Africa: Recent Trends and New Developments

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request dated May 6, 2019 from the United States Trade Representative (USTR) under the section 332(g) of the Tariff Act of 1930, the U.S. International Trade Commission (Commission) has instituted Investigation No. 332–571, *U.S. Trade and Investment with Sub-Saharan Africa: Recent Trends and New Developments,* for the purpose of preparing the report requested by the USTR. The Commission has scheduled a public hearing in connection with this investigation for July 24, 2019.

DATES:

July 12, 2019: Deadline for filing requests to appear at the public hearing.

July 17, 2019: Deadline for filing pre-hearing briefs and statements.

July 24, 2019: Public hearing.

July 31, 2019: Deadline for filing post-hearing briefs and statements.

August 16, 2019: Deadline for filing all other written submissions.

March 31, 2020: Transmittal of Commission report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leaders Arthur Chambers (*arthur.chambers@usitc.gov or* 202–205–2766) or Wen Jin (Jean) Yuan (*wenjin.yuan@usitc.gov* or 202–205–2383) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (*william.gearhart@usitc.gov* or 202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (*margaret.olaughlin@usitc.gov* or 202–205–1819). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its internet server *(https://www.usitc.gov).* 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.

Background: The Commission instituted this investigation following receipt of a letter from the USTR dated May 6, 2019. The letter requested that the Commission conduct an investigation and provide a report on U.S. trade and investment with sub-Saharan Africa (SSA). The USTR asked that the Commission's report, to the extent information is available, focus primarily on the years 2016–2018, or the latest three years for which data are available, but where appropriate examine longer-term trends since 2000. The USTR asked that this report should include the following:

1. An overview of U.S. exports of goods and services to SSA, which should, to the extent information is available:

a. Identify the sectors in which U.S. exports of goods and services to SSA have increased the most, in both value and percentage terms, and indicate major factors behind this growth.

b. Identify the SSA countries to which U.S. exports of goods and services have increased the most, in both value and percentage terms, and indicate the major factors behind this growth.

c. Identify SSA countries to which U.S. outward FDI has increased the most, in both value and percentage terms, and indicate major factors behind this growth.

d. Provide examples of how products and services from the United States integrate into key SSA value chains; identify possible opportunities for U.S. firms to better integrate into these value chains, where appropriate; and describe national or regional policies and other macroeconomic factors that may affect future demand for these U.S. products.

2. An overview of U.S. imports of goods and services from SSA, which should, to the extent information is available:

a. Identify the sectors in which U.S. imports of goods and services from SSA have increased the most, in both value and percentage terms, and indicate major factors behind this growth. Data on goods should include both AGOA (including GSP) imports and total imports.

b. Identify the SSA countries in which exports of goods and services to the United States have increased the most, in both value and percentage terms, and indicate the major factors behind this growth. Data on goods should include both AGOA (including GSP) imports and total imports.

3. To the extent information is available, describe the intellectual property environment, including national and regional laws, enforcement measures, and infringement issues, in key SSA markets. Through case studies describe the effects of the intellectual property environment on trade and investment in the key SSA markets.

4. Provide a broad overview and examples of technological innovation in the SSA food and agricultural production, processing, and marketing system. This should include a broad description of SSA food and agricultural producers' use of technological improvements in such areas as crop and livestock nutrition and genetics (including biotechnology); machinery and equipment; data processing and analytics; and digital market information and risk management systems. Through case studies, describe how the adoption of such technological improvements has affected certain SSA food and agricultural producers' overall production and export performance. Additionally, describe current national and regional regulatory policies and market conditions in key countries in SSA that may affect the adoption of technological improvements in the SSA food and agricultural sector.

5. Provide a broad overview and describe recent developments in the digital economy for key SSA markets. Provide information on the market for digital technologies in those key SSA markets as well as the role of digital products and services from the United States. To the extent that data are available, describe the market for digital products and services, such as internet-connected devices, cloud computing, e-commerce, Internet of Things, blockchain, and internet search and digital content, as well as how adoption of digital technologies affects other industry sectors, such as manufacturing and other services. Describe current national and regional regulatory and

policy measures and market conditions in key countries in SSA that affect digital trade.

6. Provide a summary of recent developments of regional integration efforts in SSA, including progress on the negotiation and implementation of the African Continental Free Trade Area.

7. Briefly summarize the AGOA utilization strategies that have been developed by SSA countries.

8. To the extent practicable, provide a summary of the most recent 2019 data on U.S. trade flows of goods with SSA.

9. The USTR asked that the Commission provide its report by March 31, 2020.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on July 24, 2019. Requests to appear at the hearing should be filed with the Secretary no later than 5:15 p.m., July 12, 2019, in accordance with the requirements in the ''written submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., July 17, 2019; and all post-hearing briefs and statements addressing matters raised at the hearing should be filed not later than 5:15 p.m., July 31, 2019. In the event that, as of the close of business on July 12, 2019, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after July 12, 2019, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., August 16, 2019. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by noon eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential business information must be deleted (see the following paragraphs for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802).

Confidential Business Information. Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In his request letter, the USTR stated that his office intends to make the Commission's report available to the public and asked that the Commission not include any confidential business information or national security information in the report. The Commission will not include any confidential business information in the report that it sends to the USTR or makes available to the public. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: The Commission intends to publish summaries of the positions of interested persons. Persons wishing to have a summary of their position included in the report should include a summary with their written submission and should specifically state the summary is intended for that purpose, and it should be titled as such. The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any confidential business information. The summary will be included in the report as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will identify the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: June 14, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–13029 Filed 6–18–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–447 and 731–TA–1116 (Second Review)]

Circular Welded Carbon-Quality Steel Pipe From China

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing and antidumping duty orders on circular welded carbon-quality steel pipe from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on November 1, 2018 (83 FR 54936) and determined on March 11, 2019 that it would conduct expedited reviews (84 FR 17889, April 26, 2019).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on June 14, 2019. The views of the Commission are contained in USITC Publication 4901 (June 2019), entitled *Circular Welded Carbon-Quality Steel Pipe from China: Investigation Nos. 701–TA–447 and 731–TA–1116 (Second Review).*

By order of the Commission.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Meredith M. Broadbent not participating.

Issued: June 14, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–12975 Filed 6–18–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0006]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application and Permit for Importation of Firearms, Ammunition and Defense Articles—ATF Form 6—Part II (5330.3B)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The proposed information collection was previously published in the **Federal Register**, on April 10, 2019, allowing for a 60-day comment period. Comments are encouraged and will be accepted for an additional 30 days until July 19, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact: Desiree M. Dickinson, ATF Firearms and Explosives Imports Branch either by mail at 244 Needy Road, Martinsburg, WV 25405, or by email at *desiree.dickinson@atf.gov,* or by telephone at 304–616–4584. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@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 agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, with change, of a currently approved collection.

(2) *The Title of the Form/Collection:* Application and Permit for Importation of Firearms, Ammunition and Defense Articles.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 6—Part II (5330.3B).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: Federal Government, State, Local or Tribal Government.

Abstract: The information on the Application and Permit for Importation of Firearms, Ammunition and Defense Articles—ATF Form 6—Part II (5330.3B) is used to determine if the article(s) described in the application qualifies for importation by the importer, and to serve as the authorization for the importer.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 400 respondents will utilize this form, and it will take each respondent approximately 30 minutes to complete this form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 200 hours, which is equal to 400 (# of respondents) * 1 (# of times per response) * .5 (30 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: June 14, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–13031 Filed 6–18–19; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Longitudinal Survey of Youth 1997

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, ''National Longitudinal Survey of Youth 1997,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 19, 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=201903-1220-002* (this link will only become active on the day following publication of this notice) or by contacting Frederick C. Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier 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: Frederick C. Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for the National Longitudinal Survey of Youth 1997 (NLSY97) information collection that includes respondents who were born from 1980 through 1984 and lived in the United States when the survey began in 1997. The primary objective of the survey is to study the transition from full-time schooling to the establishment of careers and families. The longitudinal focus of the survey requires information to be collected about the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation. Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. The NLSY97 will continue to use the telephone as the primary mode of interviews. Approving this ICR would allow the BLS to reinstate and revise the collection by including new questions on expectations of working in the future, on tax filing, on chronic pain, on the use of painkillers, and on device ownership. In addition, the BLS has attempted to streamline the questionnaire so that it will be shorter and less burdensome for respondents. To this end, fewer questions will be asked about household members, college attendance and experience, and financial insecurity. Questions on wage bargaining and using the internet for job search will be dropped used to classify jobs as regular, self-employed, or nontraditional have been streamlined. The BLS Authorizing Statue authorizes this information collection. *See* 29 U.S.C. 1, 2.

This proposed 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 if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on February 12, 2019 (84 FR 3496).

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 1220–0157. 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: National Longitudinal Survey of Youth 1997.

OMB Control Number: 1220–0157.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 6,520.

Total Estimated Number of Responses: 6,650.

Total Estimated Annual Time Burden: 7,616 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: June 13, 2019.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2019–12977 Filed 6–18–19; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of National Council on the Humanities

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Council on the Humanities will meet to advise the Chairman of the National Endowment for the Humanities (NEH) with respect to policies, programs and procedures for carrying out his functions; to review applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 and make recommendations thereon to the Chairman; and to consider gifts offered to NEH and make recommendations thereon to the Chairman.

DATES: The meeting will be held on Thursday, July 11, 2019, from 9:00 a.m. until 12:00 p.m., and Friday, July 12, 2019, from 9:00 a.m. until adjourned.

ADDRESSES: The meeting will be held at Constitution Center, 400 7th Street SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, 4th Floor, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The National Council on the Humanities is meeting pursuant to the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended). The Committee meetings of the National Council on the Humanities will be held on July 11, 2019, as follows: The policy discussion session (open to the public) will convene at 9:00 a.m. until approximately 10:30 a.m., followed by the discussion of specific grant applications and programs before the Council (closed to the public) from 10:30 a.m. until 12:00 p.m. The following Committees will meet in the NEH offices:

Digital Humanities/Education Programs/Federal/State Partnership;
Preservation and Access/Challenge Grants;
Public Programs; and
Research Programs.

The plenary session of the National Council on the Humanities will convene on July 12, 2019, at 9:00 a.m. in the

Conference Center at Constitution Center. The agenda for the morning session (open to the public) will be as follows:

A. Minutes of the Previous Meeting

B. Reports

1. Chairman's Remarks
2. Senior Deputy Chairman's Remarks
3. Presentation by guest speaker Brent Seales, Professor of Computer Science at the University of Kentucky
4. Reports on Policy and General Matters

a. Digital Humanities

b. Education Programs

c. Federal/State Partnership

d. Preservation and Access

e. Challenge Grants

f. Public Programs

g. Research Programs

The remainder of the plenary session will be for consideration of specific applications and therefore will be closed to the public.

As identified above, portions of the meeting of the National Council on the Humanities will be closed to the public pursuant to sections 552b(c)(4), 552b(c)(6), and 552b(c)(9)(B) of Title 5 U.S.C., as amended. The closed sessions will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, and discussion of certain information, the premature disclosure of which could significantly frustrate implementation of proposed agency action. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Please note that individuals planning to attend the public sessions of the meeting are subject to security screening procedures. If you wish to attend any of the public sessions, please inform NEH as soon as possible by contacting Melanie Gaylord at (202) 606–8322 or *gencounsel@neh.gov.* Please also provide advance notice of any special needs or accommodations, including for a sign language interpreter.

Dated: June 13, 2019.

Elizabeth Voyatzis,

Committee Management Officer, National Endowment for the Humanities.

[FR Doc. 2019–12937 Filed 6–18–19; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2018–0288]

Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; reissuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is reissuing an exemption, originally approved on December 19, 2018, that exempted Exelon Generation Company, LLC (Exelon or the licensee) for Oyster Creek Nuclear Generating Station (Oyster Creek) to reduce the minimum insurance coverage limit from $1.06 billion to $50 million. The December 19, 2018, exemption originally had an effective date of 12 months (365 days) from the certification of permanent cessation of power operations. The reissued exemption has a new effective date of 9.38 months (285 days) after from the certification of permanent cessation of power operations.

DATES: The exemption was reissued on June 12, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0288 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0288. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Amy M. Snyder, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6822; email: *Amy.Snyder@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated at Rockville, Maryland, on June 14, 2019.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket No. 50–219

Exelon Generation Company, LLC

Oyster Creek Nuclear Generating Station

Exemption

Onsite Property Damage Insurance

I. Background

Exelon Generation Company, LLC (Exelon, the licensee), is the holder of Renewed Facility Operating License No. DPR–16 for Oyster Creek Nuclear Generating Station Oyster Creek Nuclear Generating Station (Oyster Creek). By letter dated February 14, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18045A084), Exelon submitted to the U.S. Nuclear Regulatory Commission (NRC) a certification in accordance with Section 50.82(a)(1)(i) of Title 10 of the *Code of Federal Regulations* (10 CFR), indicating that it plans to cease permanent operation no later than October 31, 2018. By letter dated September 25, 2018 (ADAMS Accession No. ML18268A258), Exelon submitted to the NRC a certification in accordance with 10 CFR 50.82(a)(1)(ii), stating that Oyster Creek permanently ceased power operations on September 17, 2018, and that, as of September 25, 2018, all fuel had been permanently removed from the Oyster Creek reactor vessel. The facility consists of a permanently shutdown and defueled boiling-water reactor located in the town of Forked River, Ocean County, New Jersey.

II. Request/Action

On December 19, 2018, the NRC exempted Exelon from 10 CFR 50.54(w)(1) to allow Exelon to reduce the minimum insurance coverage limit for Oyster Creek from $1.06 billion to $50 million (ADAMS Accession Nos. ML18228A852 [Cover Letter]; ML18228A851 [Exemption]). The December 19, 2018, exemption originally had an effective date of 12 months (365 days) from the certification of permanent cessation of power operations under 10 CFR 50.82(a)(1).

By letter dated April 4, 2019 (ADAMS Accession No. ML19094B776), Exelon requested to change the effective date of the December 19, 2018, exemption from 12 months (365 days) to 9.38 months (285 days) from the certification of permanent cessation of power operations under 10 CFR 50.82(a)(1). Exelon certified that Oyster Creek permanently ceased power operations on September 17, 2018. Therefore, the revised effective date of the exemption would be June 29, 2019.

To provide a complete record of the NRC staff's review, the NRC is reissuing the December 19, 2018, exemption from 10 CFR 50.54(w)(1) with a revised effective date of 9.38 months (285 days) from the certification of permanent cessation of power operations under 10 CFR 50.82(a)(1). This reissued exemption supersedes the exemption issued on December 19, 2018.

The reissued exemption from the requirements of 10 CFR 50.54(w)(1) permits the licensee to reduce the required level of onsite property damage insurance from $1.06 billion to $50 million for Oyster Creek effective at 9.38 months (285 days) after certification of permanent cessation of operations at Oyster Creek, commensurate with the reduced risk of an incident at the permanently shutdown facility.

The regulation at 10 CFR 50.54(w)(1) requires each licensee to have and maintain onsite property damage insurance to stabilize and decontaminate the reactor and reactor site in the event of an accident. The onsite insurance coverage must be either $1.06 billion or whatever amount of insurance is generally available from private sources (whichever is less).

The licensee states that the risk of an incident at a permanently shutdown and defueled reactor is much less than the risk from an operating power reactor. In addition, since reactor operation is no longer authorized at Oyster Creek, there are no events that would require the stabilization of reactor conditions after an accident. Similarly, the risk of an accident that would result in significant onsite contamination at Oyster Creek is also much lower than the risk of such an event at operating reactors. Therefore, Exelon requested an exemption from 10 CFR 50.54(w)(1) to reduce its onsite property damage insurance from $1.06 billion to $50 million, commensurate with the reduced risk of an incident at the permanently shutdown and defueled Oyster Creek site.

III. Discussion

Under 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present.

The financial protection limits of 10 CFR 50.54(w)(1) were established after the Three Mile Island accident out of concern that licensees may be unable to financially cover onsite cleanup costs in the event of a major nuclear accident. The specified $1.06 billion coverage amount requirement was developed based on an analysis of an accident at a nuclear reactor operating at power, resulting in a large fission product release and requiring significant resource expenditures to stabilize the reactor and ultimately decontaminate and cleanup the site.

These cost estimates were developed based on the spectrum of postulated accidents for an operating nuclear reactor. Those costs were derived from the consequences of a release of radioactive material from the reactor. Although the risk of an accident at an operating reactor is very low, the consequences onsite and offsite can be significant. In an operating plant, the high temperature and pressure of the reactor coolant system (RCS), as well as the inventory of relatively short-lived radionuclides, contribute to both the risk and consequences of an accident. With the permanent cessation of reactor operations at Oyster Creek and the permanent removal of the fuel from the reactor vessel, such accidents are no longer possible. As a result, the reactor vessel, RCS, and supporting systems no longer operate and have no function related to the storage of the irradiated fuel. Therefore, postulated accidents involving failure or malfunction of the reactor, RCS, or supporting systems are no longer be applicable.

During reactor decommissioning, the largest radiological risks are associated with the storage of spent fuel onsite. By letter dated April 4, 2019, Exelon discusses both design-basis and beyond design-basis events involving irradiated fuel stored in the spent fuel pool (SFP). The licensee determined that there are no possible design-basis events at Oyster Creek that could result in an offsite radiological release exceeding the limits established by the U.S. Environmental Protection Agency's (EPA) early-phase Protective Action Guidelines (PAGs) of 1 rem (roentgen equivalent man) at the exclusion area boundary, as a way to demonstrate that any possible radiological releases would be minimal and not require precautionary protective actions (*e.g.,* sheltering in place or evacuation). The NRC staff evaluated the radiological consequences associated with various decommissioning activities, and design-basis accidents at Oyster Creek, in consideration of a permanently shutdown and defueled condition. The possible design-basis accident scenarios at Oyster Creek have greatly reduced radiological consequences. Based on its review, the NRC staff concluded that no reasonably conceivable design-basis accident exists that could cause an offsite release greater than the EPA PAGs.

The only incident that might lead to a significant radiological release at a decommissioning reactor is a zirconium fire. The zirconium fire scenario is a postulated, but highly unlikely, beyond design-basis accident scenario that involves loss of water inventory from the SFP, resulting in a significant heatup of the spent fuel, and culminating in substantial zirconium cladding oxidation and fuel damage. The probability of a zirconium fire scenario is related to the decay heat of the irradiated fuel stored in the SFP. Therefore, the risks from a zirconium fire scenario continue to decrease as a function of the time since Oyster Creek has been permanently shut down.

The Commission has previously authorized a lesser amount of onsite financial protection, based on this analysis of the zirconium fire risk. In SECY–96–256, ''Changes to Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w)(1) and 10 CFR 140.11,'' dated December 17, 1996 (ADAMS Accession No. ML15062A483), the NRC staff recommended changes to the power reactor financial protection regulations that would allow licensees to lower onsite insurance levels to $50 million upon demonstration that the fuel stored in the SFP can be air-cooled. In its Staff Requirements Memorandum to SECY–96–256, dated January 28, 1997 (ADAMS Accession No.

ML15062A454), the Commission supported the NRC staff's recommendation that, among other things, would allow permanently shutdown power reactor licensees to reduce commercial onsite property damage insurance coverage to $50 million when the licensee was able to demonstrate the technical criterion that the spent fuel could be air-cooled if the SFP was drained of water. The NRC staff has used this technical criterion to grant similar exemptions to other decommissioning reactors (*e.g.,* Maine Yankee Atomic Power Station, published in the **Federal Register** on January 19, 1999 [64 FR 2920]; and Zion Nuclear Power Station, published in the **Federal Register** on December 28, 1999 [64 FR 72700]). These prior exemptions were based on these licensees demonstrating that the SFP could be air-cooled, consistent with the technical criterion discussed above.

In SECY–00–0145, ''Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning,'' dated June 28, 2000, and SECY–01–0100, ''Policy Issues Related to Safeguards, Insurance, and Emergency Preparedness Regulations at Decommissioning Nuclear Power Plants Storing Fuel in the Spent Fuel Pool,'' dated June 4, 2001 (ADAMS Accession Nos. ML003721626 and ML011450420, respectively), the NRC staff discussed additional information concerning SFP zirconium fire risks at decommissioning reactors and associated implications for onsite property damage insurance. Providing an analysis of when the spent fuel stored in the SFP is capable of air-cooling is one measure that can be used to demonstrate that the probability of a zirconium fire is exceedingly low. However, the NRC staff has more recently used an additional analysis that bounds an incomplete drain down of the SFP water, or some other catastrophic event (such as a complete drainage of the SFP with rearrangement of spent fuel rack geometry and/or the addition of rubble to the SFP). The analysis postulates that decay heat transfer from the spent fuel via conduction, convection, or radiation would be impeded. This analysis is often referred to as an adiabatic heatup.

The licensee's analyses referenced in its exemption request demonstrates that under conditions where the SFP water inventory has drained completely and only air-cooling of the stored irradiated fuel is available, there is reasonable assurance that after 9.38 months (285 days) from the permanent shutdown of the facility on September 17, 2018, the Oyster Creek spent fuel will remain at temperatures far below those associated with a significant radiological release.

As discussed in the staff response to a question in SECY–00–0145, ''the staff believes that full insurance coverage must be maintained for 5 years or until a licensee can show by analysis that its SFP is no longer vulnerable to such [a zirconium] fire.''

The licensee's adiabatic heatup analyses demonstrate that there would be at least 10 hours after the loss of all means of cooling (both air and/or water) before the spent fuel cladding would reach a temperature where the potential for a significant offsite radiological release could occur. The licensee states that for this loss of all cooling scenario, 10 hours is sufficient time for personnel to respond with additional resources, equipment, and capability to restore cooling to the SFPs, even after a non-credible, catastrophic event.

In the analysis provided in the Attachment to its submittal dated November 6, 2018, as supplemented by letter dated February 13, 2019, with Attachment 1, Response to NRC's Request for Additional Information and Attachment 2, Zirconium Fire Analysis for Drained Spent Fuel Pool, C–1302–226–E310–457, Revision 2, (ADAMS Accession Nos. ML18310A306, and ML19044A643, respectively), the licensee compared the conditions for the hottest fuel assembly stored in the SFP to a criterion proposed in SECY–99–168, ''Improving Decommissioning Regulations for Nuclear Power Plants'' (ADAMS Accession No. ML12265A598), applicable to offsite emergency response for the unit in the decommissioning process. This criterion considers the time for the hottest assembly to heat up from 30 degrees Celsius (°C) to 900 °C adiabatically. If the heatup time is greater than 10 hours, then offsite emergency preplanning involving the plant is not necessary. Based on the limiting fuel assembly for decay heat and adiabatic heatup analysis presented in the licensee's submittals, at 9.38 months (285 days) after permanent cessation of power operations (*i.e.,* 9.38 months decay time), the time for the hottest fuel assembly to reach 900 °C is 10 hours after the assemblies have been uncovered. As stated in NUREG–1738, ''Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants'' (ADAMS Accession No. ML010430066), 900 °C is an acceptable temperature to use for assessing onset of fission product release under transient conditions (to establish the critical decay time for determining availability of 10 hours for deployment of mitigation equipment and, if necessary, for offsite agencies to take appropriate action to protect the health and safety of the public, if fuel and cladding oxidation occurs in air). The NRC staff reviewed the calculation to verify that important physical properties of materials were within acceptable ranges and the results were accurate. The NRC staff determined that physical properties were appropriate. Therefore, the NRC staff found that after 9.38 months (285 days) from the permanent shutdown of the facility on September 17, 2018, more than 10 hours would be available before a significant offsite release could begin. The NRC staff concluded that the adiabatic heatup calculation provided an acceptable method for determining the minimum time available for deployment of mitigation equipment and, if necessary, implementing measures under a comprehensive general emergency plan.

The NRC staff performed an evaluation of the design-basis accidents for Oyster Creek being permanently defueled as part of SECY–18–0062, ''Request By The Exelon Generation Company, LLC For Exemptions From Certain Emergency Planning Requirements For The Oyster Creek Nuclear Generating Station,'' dated May 31, 2018 (ADAMS Accession No. ML18030B340). The staff also evaluated the licensee's updated adiabatic heatup calculation in its submittal dated November 6, 2018, as supplemented by letter dated February 13, 2019 with Attachment 1, Response to NRC's Request for Additional Information and Attachment 2, Zirconium Fire Analysis for Drained Spent Fuel Pool, C–1302–226–E310–457, Revision 2, (ADAMS Accession Nos. ML18310A306, and ML19044A643, respectively).

Based on the NRC staff's evaluation of the licensee's adiabatic heatup calculation as well as the evaluation in SECY–18–0062 and SECY–96–256, the NRC staff determined $50 million to be an adequate level of onsite property damage insurance for a decommissioning reactor, once the spent fuel in the SFP is no longer susceptible to a zirconium fire. The NRC staff has postulated that there is still a potential for other radiological incidents at a decommissioning reactor that could result in significant onsite contamination besides a zirconium fire. In SECY–96–256, the NRC staff cited the rupture of a large contaminated liquid storage tank (~450,000 gallon), causing soil contamination and potential groundwater contamination, as the most costly postulated event to decontaminate and remediate (other than a SFP zirconium fire). The postulated large liquid radiological

waste storage tank rupture event was determined to have a bounding onsite cleanup cost of approximately $50 million. Therefore, the NRC staff determined that the licensee's proposal to reduce onsite insurance to a level of $50 million would be consistent with the bounding cleanup and decontamination cost, as discussed in SECY–96–256, to account for the postulated rupture of a large liquid radiological waste tank at the Oyster Creek site, should such an event occur.

The NRC staff has determined that the licensee's proposed reduction in onsite property damage insurance coverage to a level of $50 million is consistent with SECY–96–256 and subsequent insurance considerations, resulting from additional zirconium fire risks, as discussed in SECY–00–0145 and SECY–01–0100. In addition, the NRC staff notes that similar exemptions have been granted to other permanently shutdown and defueled power reactors, upon demonstration that the criterion of the zirconium fire risks from the irradiated fuel stored in the SFP is of negligible concern. As previously stated, the NRC staff concluded that 9.38 months (285 days) after the permanent shutdown of the facility on September 17, 2018, sufficient irradiated fuel decay time has elapsed at Oyster Creek to decrease the probability of an onsite radiological release from a postulated zirconium fire accident to negligible levels. In addition, the licensee's proposal to reduce onsite insurance to a level of $50 million is consistent with the maximum estimated cleanup costs for the recovery from the rupture of a large liquid radwaste storage tank.

The NRC staff also notes that in accordance with the Oyster Creek Post Shutdown Decommissioning Activities Report (PSDAR) dated May 21, 2018 (ADAMS Accession No. ML18141A775), all spent fuel will be removed from the SFPs and moved into dry storage at an onsite independent spent fuel storage installation (ISFSI) by the end of March 2024, and the probability of an initiating event that would threaten pool integrity occurring before that time is extremely low, which further supports the conclusion that the zirconium fire risk is negligible.

A. The Exemption Is Authorized by Law

The reissued exemption from 10 CFR 50.54(w)(1) allows Exelon to reduce the minimum coverage limit for onsite property damage insurance no earlier than 9.38 months (285 days) after the permanent cessation of power operations. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law.

As explained above, the NRC staff has determined that the licensee's proposed reduction in onsite property damage insurance coverage to a level of $50 million is consistent with SECY–96–256. Moreover, the NRC staff concluded that 9.38 months (285 days) after the permanent shutdown of the facility, sufficient irradiated fuel decay time will have elapsed at Oyster Creek to decrease the probability of an onsite and offsite radiological release from a postulated zirconium fire accident to negligible levels. In addition, the licensee's proposal to reduce onsite insurance to a level of $50 million is consistent with the maximum estimated cleanup costs for the recovery from the rupture of a large liquid radiological waste storage tank.

The NRC staff has determined that reissuing the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, based on its review of Exelon's exemption request as discussed above, and consistent with SECY–96–256, the NRC staff concludes that the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to the Public Health and Safety

The onsite property damage insurance requirements of 10 CFR 50.54(w)(1) were established to provide financial assurance that following a significant nuclear incident, onsite conditions could be stabilized and the site decontaminated. The requirements of 10 CFR 50.54(w)(1) and the existing level of onsite insurance coverage for Oyster Creek are predicated on the assumption that the reactor is operating. However, Oyster Creek permanently shutdown on September 17, 2018, and defueled on September 25, 2018. The permanently defueled status of the facility results in a significant reduction in the number and severity of potential accidents, and correspondingly, a significant reduction in the potential for and severity of onsite property damage. The proposed reduction in the amount of onsite insurance coverage does not impact the probability or consequences of potential accidents. The proposed level of insurance coverage is commensurate with the reduced consequences of potential nuclear accidents at Oyster Creek. Therefore, the NRC staff concludes that granting the requested exemption will not present an undue risk to the health and safety of the public.

C. The Exemption Is Consistent With the Common Defense and Security

The reissued exemption would not eliminate any requirements associated with physical protection of the site and would not adversely affect Exelon's ability to physically secure the site or protect special nuclear material. Physical security measures at Oyster Creek are not affected by the requested exemption. Therefore, the reissued exemption is consistent with the common defense and security.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the regulation.

The underlying purpose of 10 CFR 50.54(w)(1) is to provide reasonable assurance that adequate funds will be available to stabilize reactor conditions and cover onsite cleanup costs associated with site decontamination, following an accident that results in the release of a significant amount of radiological material. Oyster Creek permanently shut down on September 17, 2018, and permanently defueled on September 25, 2018, it is no longer possible for the radiological consequences of design-basis accidents or other credible events at Oyster Creek to exceed the limits of the EPA PAGs at the exclusion area boundary. The licensee has evaluated the consequences of highly unlikely, beyond-design-basis conditions involving a loss of coolant from the SFP. The analyses show that after 9.38 months (285 days) from permanent cessation of power operations on September 17, 2018, the likelihood of such an event leading to a large radiological release is negligible. The NRC staff's evaluation of the licensee's analyses confirms this conclusion.

The NRC staff also finds that the licensee's proposed $50 million level of onsite insurance is consistent with the bounding cleanup and decontamination cost, as discussed in SECY–96–256, to account for the hypothetical rupture of a large liquid radiological waste tank at the Oyster Creek site, should such an event occur. Therefore, the NRC staff concludes that the application of the current requirements in 10 CFR 50.54(w)(1) to maintain $1.06 billion in onsite insurance coverage is not necessary to achieve the underlying purpose of the rule for the permanently shutdown and defueled Oyster Creek reactor.

Under 10 CFR 50.12(a)(2)(iii), special circumstances are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

The NRC staff concludes that if the licensee was required to continue to maintain an onsite insurance level of $1.06 billion, the associated insurance premiums would be in excess of those necessary and commensurate with the radiological contamination risks posed by the site. In addition, such insurance levels would be significantly in excess of other decommissioning reactor facilities that have been granted similar exemptions by the NRC.

The NRC staff finds that compliance with the existing rule would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted and are significantly in excess of those incurred by others similarly situated.

Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist.

E. Environmental Considerations

The NRC approval of the exemption to insurance or indemnity requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under § 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: Surety, insurance, or indemnity requirements.

As the Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards, I have determined that reissuing the exemption involves no significant hazards consideration because reducing the licensee's onsite property damage insurance for Oyster Creek does not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted financial protection regulation is unrelated to the operation of Oyster Creek. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure.

In addition, the exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.,* potential amount of radiation in an accident), nor mitigation. Therefore, there is no significant increase in the potential for, or consequences of, a radiological accident. In addition, there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. Moreover, the requirement for onsite property damage insurance involves surety, insurance, and indemnity matters. Accordingly, the exemption request meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the reissue of this exemption.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), reissuing the exemption originally granted on December 19, 2018, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present as set forth in 10 CFR 50.12.

Therefore, the Commission hereby reissues Exelon an exemption from the requirements of 10 CFR 50.54(w)(1) for Oyster Creek. Exelon certified that it permanently ceased power operations at Oyster Creek on September 17, 2018. The reissued exemption will permit Oyster Creek to lower the minimum required onsite insurance to $50 million no earlier than 9.38 months (285 days) after the permanent cessation of power operations.

The exemption is effective on June 29, 2019 (9.38 months (285 days) after Oyster Creek permanently ceased power operations on September 17, 2019).

Dated at Rockville, Maryland, this 12 day of June 2019.

For the Nuclear Regulatory Commission.

/RA/

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–12997 Filed 6–18–19; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2018–0288]

Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; reissuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is reissuing an exemption, originally approved on December 19, 2018, that allowed Exelon to reduce the required level of primary off-site liability insurance for Oyster Creek Nuclear Generating Station (Oyster Creek) from $450 million to $100 million and eliminate the requirement to carry secondary financial protection. The December 19, 2018, exemption originally had an effective date of 12 months (365 days) from the certification of permanent cessation of power operations. The reissued exemption has a new effective date of 9.38 months (285 days) after the docketing of the certification of permanent cessation of power operations at Oyster Creek.

DATES: The exemption was issued on June 12, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0288 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0288. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical

questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''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 e-mail to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Amy M. Snyder, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6822; e-mail: *Amy.Snyder@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated at Rockville, Maryland, this 14th day of June, 2019.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

Exelon Generation Company, LLC

Oyster Creek Nuclear Generating Station

Exemption

I. Background.

Exelon Generation Company, LLC (Exelon, the licensee), is the holder of Renewed Facility Operating License No. DPR-16 for Oyster Creek Nuclear Generating Station (Oyster Creek). By letter dated February 14, 2018 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML18045A084), Exelon submitted to the U.S. Nuclear Regulatory Commission (NRC) a certification in accordance with Sections 50.82(a)(1)(i) of Title 10 of the *Code of Federal Regulations* (10 CFR), indicating that it plans to cease permanent operation no later than October 31, 2018. By letter dated September 25, 2018 (ADAMS Accession No. ML18268A258), Exelon submitted to the NRC a certification in accordance with 10 CFR 50.82(a)(1)(ii), stating that Oyster Creek permanently ceased power operations on September 17, 2018, and that, as of September 25, 2018, all fuel had been permanently removed from the Oyster Creek reactor vessel. The facility consists of a permanently shutdown and defueled boiling-water reactor located in the town of Forked River, Ocean County, New Jersey.

II. Request/Action.

On December 19, 2018, the NRC exempted Exelon from 10 CFR 140.11(a)(4) to allow Exelon to reduce the required level of primary off-site liability insurance for Oyster Creek from $450,000,000 to $100,000,000, and eliminate the requirement for Oyster Creek to carry secondary financial protection (ADAMS Accession Nos. ML18229A005 [Cover Letter] and ML18229A006 [Exemption]). The December 19, 2018, exemption originally had an effective date of 12 months (365 days) from the certification of permanent cessation of power operations under 10 CFR 50.82(a)(1).

By letter dated April 4, 2019 (ADAMS Accession No. ML19094B776), Exelon requested to change the effective date of the December 19, 2018, exemption from 12 months (365 days) to 9.38 months (285 days) from the certification of permanent cessation of power operations under 10 CFR 50.82(a)(1). Exelon certified that Oyster Creek permanently ceased power operations on September 17, 2018. Therefore, the revised effective date of the exemption would be June 29, 2019.

To provide a complete record of the NRC staff's review, the NRC is reissuing the December 19, 2018, exemption from 10 CFR 140.11(a)(4) with a revised effective date of 9.38 months (285 days) from the certification of permanent cessation of power operations under 10 CFR 50.82(a)(1). This reissued exemption supersedes the exemption issued on December 19, 2018.

The regulation at 10 CFR 140.11(a)(4) requires each licensee to have and maintain primary financial protection in an amount of $450 million. In addition, the licensee is required to participate in an industry retrospective rating plan (secondary financial protection) that commits each licensee to pay into an insurance pool to be used for damages that may exceed primary insurance coverage. Participation in the industry retrospective rating plan will subject Exelon to deferred premium charges up to a maximum total deferred premium of $131,056,000 with respect to any nuclear incident at any operating nuclear power plant, and up to a maximum annual deferred premium of $20,496,000 per incident.

The licensee states that the risk of an offsite radiological release is significantly lower at a nuclear power reactor that has permanently shut down and defueled, when compared to an operating power reactor. Similarly, the associated risk of offsite liability damages that would require insurance or indemnification is commensurately lower for permanently shut down and defueled plants. Therefore, Exelon requested an exemption from 10 CFR 140.11(a)(4), to permit a reduction in primary offsite liability insurance and to withdraw from participation in the industry retrospective rating plan.

III. Discussion.

Pursuant to 10 CFR 140.8, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in 10 CFR part 140, when the exemptions are authorized by law and are otherwise in the public interest. The NRC staff has reviewed Exelon's request for an exemption from 10 CFR 140.11(a)(4) and has concluded that the requested exemption is authorized by law and is otherwise in the public interest.

The Price Anderson Act of 1957 (PAA) requires that nuclear power reactor licensees have insurance to compensate the public for damages arising from a nuclear incident. Specifically, the PAA requires licensees of facilities with a ''rated capacity of 100,000 electrical kilowatts or more'' to maintain the maximum amount of primary offsite liability insurance commercially available (currently $450 million) and a specified amount of secondary insurance coverage (currently up to $131,056,000 per reactor). In the event of an accident causing offsite damages in excess of $450 million, each licensee would be assessed a prorated share of the excess damages, up to $131,056,000 per reactor, for a total of approximately $13 billion per nuclear incident. The NRC's regulations at 10 CFR 140.11(a)(4) implement these PAA insurance requirements and set forth the amount of primary and secondary insurance each power reactor licensee must have.

As noted above, the PAA requirements with respect to primary and secondary insurance, and the implementing regulations at 10 CFR

140.11(a)(4), apply to licensees of facilities with a ''rated capacity of 100,000 electrical kilowatts or more.'' When the NRC issues a license amendment to a decommissioning licensee to reflect the defueled status of the facility, the license amendment includes removal of the rated capacity of the reactor from the license.

Accordingly, a reactor that is undergoing decommissioning has no ''rated capacity.'' Removal of the rated capacity from the facility of a decommissioning licensee, thus, allows the NRC to take the reactor licensee out of the category of reactor licensees that are required to maintain the maximum available insurance and to participate in the secondary retrospective insurance pool under the PAA, subject to a technical finding that lesser potential hazards exist at the facility after termination of operations.

The financial protection limits of 10 CFR 140.11(a)(4) were established to require a licensee to maintain sufficient insurance, as specified under the PAA, to satisfy liability claims by members of the public for personal injury, property damage, and the legal cost associated with lawsuits, as the result of a nuclear accident at an operating reactor with a rated capacity of 100,000 kilowatts electric (or greater). Thus, the insurance levels established by this regulation, as required by the PAA, were associated with the risks and potential consequences of an accident at an operating reactor with a rated capacity of 100,000 kilowatts electric (or greater).

The legal and associated technical basis for granting exemptions from 10 CFR part 140 is set forth in SECY-93-127, ''Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning,'' dated May 10, 1993 (ADAMS Accession No. ML12257A628). The legal analysis underlying SECY-93-127 concluded that, upon a technical finding that lesser potential hazards exist after termination of operations (and removal of the rated capacity), the Commission has the discretion under the PAA to reduce the amount of insurance required of a licensee undergoing decommissioning.

As a technical matter, the fact that a reactor has permanently ceased operations is not itself determinative as to whether a licensee may cease providing the offsite liability coverage required by the PAA and 10 CFR 140.11(a)(4). In light of the presence of freshly discharged irradiated fuel in the spent fuel pool (SFP) at a recently shutdown reactor, the primary consideration is the risk of offsite radiological release from a zirconium fire. That risk generally remains for about 10-16 months of decay time for the fuel used in the last cycle of power operation. After that time, the offsite consequences of an offsite radiological release from a zirconium fire are negligible for shutdown reactors, but the SFP is still operational and an inventory of radioactive materials still exists onsite. Therefore, an evaluation of the potential for offsite damage is necessary to determine the appropriate level of offsite insurance post shutdown, in accordance with the Commission's discretionary authority under the PAA to establish an appropriate level of required financial protection for such shutdown facilities.

The NRC staff has conducted an evaluation and concluded that, aside from the handling, storage, and transportation of spent fuel and radioactive materials for a permanently shut down and defueled reactor, no reasonably conceivable potential accident exists that could cause significant offsite damage. During normal power reactor operations, the forced flow of water through the reactor coolant system removes heat generated by the reactor. The reactor coolant system transfers this heat away from the reactor core by converting reactor feedwater to steam, which then flows to the main turbine generator to produce electricity. Most of the accident scenarios postulated for operating power reactors involve failures or malfunctions of systems that could affect the fuel in the reactor core, which in the most severe postulated accidents, would involve the release of large quantities of fission products. With the permanent cessation of reactor operations at Oyster Creek and the permanent removal of the fuel from the reactor core, such accidents are no longer possible. The reactor, reactor coolant system, and supporting systems no longer operate and have no function related to the storage of the irradiated fuel. Therefore, postulated accidents involving failure or malfunction of the reactor, reactor coolant system, or supporting systems are no longer applicable.

During reactor decommissioning, the principal radiological risks are associated with the storage of spent fuel onsite. On a case-by-case basis, licensees undergoing decommissioning have been granted permission to reduce the required amount of primary offsite liability insurance coverage from $450 million to $100 million and to withdraw from the secondary insurance pool. One of the technical criteria for granting the exemption is that the possibility of a design-basis event that could cause significant offsite damage has been eliminated.

The NRC staff performed an evaluation of the design-basis accidents for Oyster Creek being permanently defueled as part of SECY-18-0062, ''Request by the Exelon Generation Company, LLC for Exemptions from Certain Emergency Planning Requirements for the Oyster Creek Nuclear Generating Station,'' dated May 31, 2018 (ADAMS Accession No. ML18030B340).

The licensee has stated, and the NRC staff agrees, that while spent fuel remains in the SFP, the only postulated design-basis accident that would remain applicable to Oyster Creek in the permanently defueled condition that could contribute a significant dose will be a fuel handling accident (FHA) in the Reactor Building, where the SFP is located. For completeness, the NRC staff also evaluated the applicability of other design-basis accidents documented in the Oyster Creek Updated Final Safety Analysis Report (UFSAR) (ADAMS Accession No. ML15307A558), to ensure that these accidents would not have consequences that could potentially exceed the 10 CFR 50.67 dose limits and Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' dose acceptance criteria or approach the U.S. Environmental Protection Agency (EPA) early phase protective action guides (PAGs).

In the Oyster Creek UFSAR, the licensee has determined that within 33 days after shutdown, the FHA doses would decrease to a level that would not warrant protective actions under the EPA early phase PAG framework, notwithstanding meeting the dose limit requirements under 10 CFR 50.67 and dose acceptance criteria under Regulatory Guide 1.183.

The NRC staff notes that the doses from an FHA are dominated by the isotope Iodine-131. The date of cessation of power operations of Oyster Creek occurred on September 17, 2018. With 9.38 months of decay, the thyroid dose from an FHA would be negligible. After 9.38 months of decay, the only isotope remaining in significant amounts, among those postulated to be released in a design-basis accident FHA, would be Krypton-85. Since Krypton-85 primarily decays by beta emission, the calculated skin dose from an FHA analysis would make an insignificant contribution to the total effective dose equivalent (TEDE), which is the parameter of interest in the determination of the EPA early phase PAGs for sheltering or evacuation. The

NRC staff concludes that the dose consequence from an FHA for the permanently defueled Oyster Creek would not approach the EPA early phase PAGs. Therefore, any offsite consequence from a design-basis radiological release is unlikely, and a significant amount of offsite liability insurance coverage is not required.

The only beyond design-basis event that has the potential to lead to a significant radiological release at a permanently shut down and defueled (decommissioning) reactor is a zirconium fire. The zirconium fire scenario is a postulated, but highly unlikely, accident scenario that involves the loss of water inventory from the SFP, resulting in a significant heatup of the spent fuel and culminating in substantial zirconium cladding oxidation and fuel damage. The probability of a zirconium fire scenario is related to the decay heat of the irradiated fuel stored in the SFP. Therefore, the risks from a zirconium fire scenario continue to decrease as a function of the time that Oyster Creek has been permanently shut down.

In the analysis provided in the Attachment to its submittal dated November 6, 2018, as supplemented by letter dated February 13, 2019, with Attachment 1, Response to NRC's Request for Additional Information and Attachment 2, Zirconium Fire Analysis for Drained Spent Fuel Pool, C-1302-226-E310-457, Revision 2, (ADAMS Accession Nos. ML18310A306, and ML19044A643, respectively), the licensee compared the conditions for the hottest fuel assembly stored in the SFP to a criterion proposed in SECY-99-168, ''Improving Decommissioning Regulations for Nuclear Power Plants'' (ADAMS Accession No. ML12265A598), applicable to offsite emergency response for the unit in the decommissioning process. This criterion considers the time for the hottest assembly to heat up from 30 degrees Celsius (°C) to 900 °C adiabatically. If the heatup time is greater than 10 hours, then offsite emergency preplanning involving the plant is not necessary. Based on the limiting fuel assembly for decay heat and adiabatic heatup analysis presented in Attachment 2, at 9.38 months (285 days) after permanent cessation of power operations (i.e., 9.38 months decay time), the time for the hottest fuel assembly to reach 900 °C is 10 hours after the assemblies have been uncovered. As stated in NUREG-1738, ''Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,'' February 2001 (ADAMS Accession No. ML010430066), 900 °C is an acceptable temperature to use for assessing onset of fission product release under transient conditions (to establish the critical decay time for determining availability of 10 hours for deployment of mitigation equipment and, if necessary, for offsite agencies to take appropriate action to protect the health and safety of the public, if fuel and cladding oxidation occurs in air).

The NRC staff reviewed the calculation to verify that important physical properties of materials were within acceptable ranges and the results were accurate. The NRC staff determined that physical properties were appropriate. Therefore, the NRC staff found that after 9.38 months (285 days), more than 10 hours would be available before a significant offsite release could begin. The NRC staff concluded that the adiabatic heatup calculation provided an acceptable method for determining the minimum time available for deployment of mitigation equipment and, if necessary, implementing measures under a comprehensive general emergency plan.

In this regard, one technical criterion for relieving decommissioning reactor licensees from the insurance obligations applicable to an operating reactor is a finding that the heat generated by the SFP has decayed to the point where the possibility of a zirconium fire is highly unlikely.

This was addressed in SECY-93-127, where the NRC staff concluded that there was a low likelihood and reduced short-term public health consequences of a zirconium fire once a decommissioning plant's spent fuel has sufficiently decayed. In its Staff Requirements Memorandum, ''Financial Protection Required of Licensees of Large Nuclear Power Plants during Decommissioning,'' dated July 13, 1993 (ADAMS Accession No. ML003760936), the Commission approved a policy that authorized, through the exemption process, withdrawal from participation in the secondary insurance layer and a reduction in commercial liability insurance coverage to $100 million, when a licensee is able to demonstrate that the spent fuel could be air-cooled if the SFP was drained of water.

The NRC staff has used this technical criterion to grant similar exemptions to other decommissioning reactors (e.g., Maine Yankee Atomic Power Station, published in the **Federal Register** on January 19, 1999 [64 FR 2920]; Zion Nuclear Power Station, published in the **Federal Register** on December 28, 1999 [64 FR 72700]; Kewaunee Power Station, published in the **Federal Register** on March 24, 2015 [80 FR 15638]; and Crystal River Unit 3 Nuclear Generation Plant, published in the **Federal Register** on May 6, 2015 [80 FR 26100]).

Additional discussions of other decommissioning reactor licensees that have received exemptions to reduce their primary insurance level to $100 million are provided in SECY-96-256, ''Changes to the Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11,'' dated December 17, 1996 (ADAMS Accession No. ML15062A483). These prior exemptions were based on the licensee demonstrating that the SFP could be air-cooled, consistent with the technical criterion discussed above.

The NRC staff has evaluated the issue of zirconium fires in SFPs and presented an independent evaluation of a SFP subject to a severe earthquake in NUREG-2161, ''Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark l Boiling Water Reactor,'' September 2014 (ADAMS Accession No. ML14255A365). This evaluation concluded that, for a representative boiling-water reactor, fuel in a dispersed high-density configuration would be adequately cooled by natural circulation air flow within several months after discharge from a reactor if the pool was drained of water.

By letters dated August 22 and December 6, 2017 (ADAMS Accession Nos. ML17234A082 and ML17340A708, respectively), Exelon confirmed that the plant design and fuel storage configuration considered in NUREG-2161 were consistent with the Oyster Creek plant design and fuel storage configurations to be used in the decommissioning of Oyster Creek. The NRC staff independently confirmed that the Oyster Creek fuel assembly decay levels are also consistent with the spent fuel considered in NUREG-2161. Thus, the NRC staff has determined that after 9.38 months (285 days) decay, the fuel stored in the Oyster Creek SFP will be able to adequately be cooled by air in the unlikely event of pool drainage.

In SECY-00-0145, ''Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning,'' dated June 28, 2000, and SECY-01-0100, ''Policy Issues Related to Safeguards, Insurance, and Emergency Preparedness Regulations at Decommissioning Nuclear Power Plants Storing Fuel in Spent Fuel Pools,'' dated June 4, 2001 (ADAMS Accession Nos. ML003721626 and ML011450420, respectively), the NRC staff discussed additional information concerning SFP zirconium fire risks at decommissioning reactors and associated implications for

offsite insurance. Analyzing when the spent fuel stored in the SFP is capable of adequate air-cooling is one measure that demonstrates when the probability of a zirconium fire would be exceedingly low.

The licensee's analyses demonstrate that under conditions where the SFP water inventory has drained and only air cooling of the stored irradiated fuel is available, there is reasonable assurance that 9.38 months (285 days) after the certification of permanent cessation of operations that the Oyster Creek spent fuel will remain at temperatures far below those associated with a significant radiological release.

In addition, the licensee performed adiabatic heatup analyses, in which a complete drainage of the SFP is combined with rearrangement of spent fuel rack geometry and/or the addition of rubble to the SFP; this type of analysis postulates that decay heat transfer from the spent fuel via conduction, convection, or radiation would be impeded. The licensee's adiabatic heatup analyses demonstrate that 9.38 months (285 days) after the certification of permanent cessation of operations, there would be at least 10 hours after the loss of all means of cooling (both air and/or water), before the spent fuel cladding would reach a temperature where the potential for a significant offsite radiological release could occur.

In the NRC staff's safety evaluation dated June 11, 2019, associated with the NRC's reissuance of exemptions from certain emergency planning requirements for Oyster Creek, with a modified effective date of 9.38 months (285 days) after the permanent cessation of operations, the NRC staff assessed the Exelon accident analyses associated with the radiological risks from a zirconium fire at a permanently shut down and defueled Oyster Creek site. Based on its evaluation of the licensee's adiabatic heatup analyses, the NRC staff found that, for the very unlikely beyond design-basis accident scenario where the SFP coolant inventory is lost in such a manner that all methods of heat removal from the spent fuel are no longer available, there will be a minimum of 10 hours from the initiation of the accident until the cladding reaches a temperature where offsite radiological release might occur. The NRC staff found that 10 hours is sufficient time to support deployment of mitigation equipment, consistent with plant conditions, to prevent the zirconium cladding from reaching a point of rapid oxidation.

The NRC staff has determined that the licensee's proposed reduction in primary offsite liability coverage to a level of $100 million, and the licensee's proposed withdrawal from participation in the secondary insurance pool for offsite financial protection, are consistent with the policy established in SECY-93-127 and subsequent insurance considerations resulting from zirconium fire risks, as discussed in SECY-00-0145 and SECY-01-0100. The NRC has previously determined in SECY-00-0145 that the minimum offsite financial protection requirement may be reduced to $100 million and that secondary insurance is not required, once it is determined that the spent fuel in the SFP is no longer thermal-hydraulically capable of sustaining a zirconium fire based on a plant-specific analysis. In addition, the NRC staff notes that similar exemptions from these insurance requirements, have been granted to other permanently shutdown and defueled power reactors, upon satisfactory demonstration that zirconium fire risk from the irradiated fuel stored in the SFP is of negligible concern.

A. The Exemption is Authorized by Law

The PAA, and its implementing regulations in 10 CFR 140.11(a)(4), require licensees of nuclear reactors that have a rated capacity of 100,000 kilowatts electric or more to have and maintain $450 million in primary financial protection and to participate in a secondary retrospective insurance pool. In accordance with 10 CFR 140.8, the Commission may grant exemptions from the regulations in 10 CFR part 140, as the Commission determines are authorized by law. The legal and associated technical basis for granting exemptions from 10 CFR part 140 are set forth in SECY-93-127. The legal analysis underlying SECY-93-127 concluded that, upon a technical finding that lesser potential hazards exist after termination of operations, the Commission has the discretion under the Price-Anderson Act to reduce the amount of insurance required of a licensee undergoing decommissioning.

The NRC staff concludes that the technical criteria for relieving Exelon from its existing primary and secondary insurance obligations have been met. As explained above, the NRC staff has concluded that no reasonably conceivable design-basis accident exists that could cause an offsite release greater than the EPA PAGs, and therefore, that any offsite consequence from a design-basis radiological release is unlikely, and the need for a significant amount of offsite liability insurance coverage is unwarranted. Additionally, the NRC staff determined that, after 9.38 months (285 days) decay, the fuel stored in the Oyster Creek SFP will be able to adequately be cooled by air in the unlikely event of pool drainage. Moreover, in the very unlikely beyond design-basis accident scenario where the SFP coolant inventory is lost in such a manner that all methods of heat removal from the spent fuel are no longer available, the NRC staff has determined that 10 hours would be available and is sufficient time to support deployment of mitigation equipment, consistent with plant conditions, to prevent the zirconium cladding from reaching a point of rapid oxidation. Thus, the NRC staff concludes that the fuel stored in the Oyster Creek SFP will have decayed sufficiently by the requested effective exemption date of 9.38 months (285 days) after the certification of permanent cessation of operations, to support a reduction in the required insurance consistent with SECY-00-0145.

The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, Section 170, or other laws, as amended, which require licensees to maintain adequate financial protection. Accordingly, consistent with the legal standard presented in SECY-93-127, under which decommissioning reactor licensees may be relieved of the requirements to carry the maximum amount of insurance available and to participate in the secondary retrospective premium pool where there is sufficient technical justification, the NRC staff concludes that the requested exemption is authorized by law.

B. The Exemption is Otherwise in the Public Interest

The financial protection limits of 10 CFR 140.11 were established to require licensees to maintain sufficient offsite liability insurance to ensure adequate funding for offsite liability claims, following an accident at an operating reactor. However, the regulation does not consider the reduced potential for and consequence of nuclear incidents at permanently shutdown and decommissioning reactors.

The basis provided in SECY-93-127, SECY-00-0145, and SECY-01-0100 allows licensees of decommissioning plants to reduce their primary offsite liability insurance and to withdraw from participation in the retrospective rating pool for deferred premium charges. As discussed in these documents, once the zirconium fire concern is determined to be negligible, possible accident scenario risks at

permanently shutdown and defueled reactors are greatly reduced, when compared to the risks at operating reactors, and the associated potential for offsite financial liabilities from an accident are commensurately less. The licensee has analyzed and the NRC staff has confirmed that the risks of accidents that could result in an offsite radiological risk are minimal, thereby justifying the proposed reductions in offsite primary liability insurance and withdrawal from participation in the secondary retrospective rating pool for deferred premium charges.

Additionally, participation in the secondary retrospective rating pool could potentially have adverse consequences on the safe and timely completion of decommissioning. If a nuclear incident sufficient to trigger the secondary insurance layer occurred at another nuclear power plant, the licensee could incur financial liability of up to $131,056,000. However, because Oyster Creek is permanently shut down, it cannot produce revenue from electricity generation sales to cover such a liability. Therefore, such liability if subsequently incurred, could significantly affect the ability of the facility to conduct and complete timely radiological decontamination and decommissioning activities. In addition, as SECY-93-127 concluded, the shared financial risk exposure to Exelon is greatly disproportionate to the radiological risk posed by Oyster Creek, when compared to operating reactors. The reduced overall risk to the public at decommissioning power plants does not warrant that Exelon be required to carry full operating reactor insurance coverage, after the requisite spent fuel cooling period has elapsed following final reactor shutdown. The licensee's proposed financial protection limits will maintain a level of liability insurance coverage commensurate with the risk to the public. These changes are consistent with previous NRC policy as discussed in SECY-00-0145, and exemptions approved for other decommissioning reactors. Thus, the underlying purpose of the regulations will not be adversely affected by the reductions in insurance coverage. Accordingly, an exemption from participation in the secondary insurance pool and a reduction in the primary insurance to $100 million, a value more in line with the potential consequences of accidents, would be in the public interest in that this assures there will be adequate funds to address any of those consequences and helps to assure the safe and timely decommissioning of the reactor.

Therefore, the NRC staff has concluded that the reissued exemption from 10 CFR 140.11(a)(4), which would permit Exelon to lower the Oyster Creek primary insurance levels and to withdraw from the secondary retrospective premium pool at the requested effective date of 9.38 months (285 days) after the certification of permanent cessation of operations, is in the public interest.

C. Environmental Considerations

The NRC's approval of an exemption from insurance or indemnity requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, in accordance with 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that: (i) There is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve surety, insurance, or indemnity requirements.

As the Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards, I have determined that reissuing the exemption involves no significant hazards consideration, as defined in 10 CFR 50.92, because reducing a licensee's offsite liability requirements at Oyster Creek does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted financial protection regulation is unrelated to the operation of Oyster Creek or site activities. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (i.e., potential amount of radiation in an accident), nor any activities conducted at the site. Therefore, there is no significant increase in the potential for, or consequences of, a radiological accident. In addition, there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region resulting from issuance of the requested exemption. The requirement for offsite liability insurance involves surety, insurance, or indemnity matters only.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the reissuance of this exemption.

IV. Conclusions.

Accordingly, the Commission has determined that, pursuant to 10 CFR 140.8, reissuing the exemption originally granted on December 19, 2018, is authorized by law and is otherwise in the public interest. Therefore, the Commission hereby reissues Exelon an exemption from the requirements of 10 CFR 140.11(a)(4) for Oyster Creek. Exelon certified that it permanently ceased operation at Oyster Creek on September 17, 2018. The exemption from 10 CFR 140.11(a)(4) permits Oyster Creek to reduce the required level of primary financial protection, from $450 million to $100 million and to withdraw from participation in the secondary layer of financial protection 9.38 months (285 days) after the certification of permanent cessation of operations.

Therefore, the exemption is effective on June 29, 2019 (9.38 months (285 days) after Oyster Creek permanently ceased power operations on September 17, 2019)

Dated at Rockville, Maryland, this 12 day of June 2019.

For the Nuclear Regulatory Commission.

RA/

John R. Tappert,
Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–13013 Filed 6–18–19; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–151 and CP2019–168; MC2019–152 and CP2019–169]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 21, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–151 and CP2019–168; *Filing Title:* USPS Request to Add Priority Mail Contract 533 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 13, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 21, 2019.

2. *Docket No(s).:* MC2019–152 and CP2019–169; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 104 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 13, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 21, 2019.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019–12973 Filed 6–18–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 19, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 14, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 534 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–153, CP2019–170.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–12974 Filed 6–18–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86101; File No. SR–FINRA–2019–014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Allow Additional Time for Reporting to TRACE of Transactions in U.S. Treasury Securities Executed To Hedge a Primary Market Transaction

June 13, 2019.

On April 16, 2019, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 6730 to provide additional time for reporting to TRACE of transactions in U.S. Treasury Securities executed to hedge a primary market transaction. The proposed rule change was published for comment in the **Federal Register** on April 30, 2019.[3] The Commission received one comment letter in support of the proposed rule change.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85713 (April 24, 2019), 84 FR 18329.

[4] *See* Letter from Robert Toomey, Managing Director and Associate General Counsel, SIFMA, to Robert W. Errett, Deputy Security, Commission, dated May 21, 2019.

[5] 15 U.S.C. 78s(b)(2).

change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 14, 2019. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposal so that it has sufficient time to consider certain issues raised by the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, designates July 29, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–FINRA–2019–014).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12925 Filed 6–18–19; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86104; File No. SR–NYSEArca–2018–98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 3, To List and Trade Shares of the iShares Commodity Multi-Strategy ETF Under NYSE Arca Rule 8.600–E

June 13, 2019.

On December 21, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the iShares Commodity Multi-Strategy ETF under NYSE Arca Rule 8.600–E. On February 1, 2019, pursuant to Section 19(b)(1) of the Act,[3] the Commission noticed the proposed rule change and, pursuant to Section 19(b)(2) of the Act,[4] 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.[5] On March 6, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On March 14, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.[7] On March 20, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change.[9] On March 29, 2019, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 2.[10] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[11] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The date of publication of notice of filing of the proposed rule change was December 21, 2018. June 19, 2019, is 180 days from that date, and August 18, 2019, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates August 18, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2018–98).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12926 Filed 6–18–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 85033, 84 FR 2618 (February 7, 2019).

[6] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2018-98/srnysearca201898-5031693-183046.pdf.*

[7] Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nysearca-2018-98/srnysearca201898-5123714-183326.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 85375, 84 FR 11375 (March 26, 2019). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.* at 11378 (citing 15 U.S.C. 78f(b)(5)).

[10] Amendment No. 3 is available at: *https://www.sec.gov/comments/sr-nysearca-2018-98/srnysearca201898-5271215-183729.pdf.*

[11] 15 U.S.C. 78s(b)(2).

[12] *Id.*

[13] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86099; File No. SR–DTC–2019–002]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Operational Arrangements and Fee Guide Relating to Structured Securities

June 13, 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 June 5, 2019, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to (i) the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (''OA'') [5] to eliminate the requirement that an Issuer's paying agent (''Paying Agent''), and a Participant that is the managing underwriter (''Underwriter''), for certain issuances of structured securities (''Structured Securities'') that have features that may affect the timeliness of payment of principal and interest (''Non-Conforming Structured Securities''), submit an attestation (''Attestation'') [6] relating to the Non-Conforming Structured Securities, as described below; (ii) the Guide to the DTC Fee Schedule (''Fee Guide'') [7] to eliminate an exception processing fee (''Exception Processing Fee'') charged to Underwriters relating to making Non-Conforming Structured Securities eligible for DTC services; and (iii) the OA to eliminate a provision that excludes Non-Conforming Structured Securities from statistics published by DTC regarding the timeliness of submission of rate information for Structured Securities, as described below.[8]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency 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

1. Purpose

The proposed rule change consists of proposed modifications to (i) the OA [9] to eliminate the requirement that a Paying Agent, and an Underwriter, for Non-Conforming Structured Securities, submit an Attestation [10] relating to the Non-Conforming Structured Securities, as described below; (ii) the Fee Guide [11] to eliminate the Exception Processing Fee; and (iii) the OA to eliminate a provision that excludes Non-Conforming Structured Securities from statistics published by DTC regarding the timeliness of submission of rate information for Structured Securities, as described below.

Background

A Structured Security, such as a collateralized mortgage obligation or asset-backed security, is a debt security backed by a pool of underlying financial assets. The underlying assets generally consist of receivables such as mortgages, credit card receivables, student or other bank loans for which the timing of principal payments by the underlying obligors may be variable and unpredictable. A Structured Security may also incorporate credit enhancements or other rights that affect the amount and timing of payments to investors.

Communication of periodic payment rates of principal and interest to the end investors in Structured Securities depends on information reporting and significant interdependencies among servicers of the underlying assets, trustees, custodians, Paying Agents, DTC, and the financial intermediaries that act on behalf of the investors. Historically, given the complexity of structure and calculations of cash flow from the underlying assets, and the interdependencies on timeliness and accuracy of performance throughout the chain of servicers and intermediaries, payment rates for Non-Conforming Structured Securities were often announced late. Processing inefficiencies and inaccuracies associated with late payment rate reporting led to increased costs for DTC associated with processing Non-Conforming Structured Securities.

In 2008, in order to recoup its processing costs relating to Non-Conforming Structured Securities, DTC implemented the Exception Processing Fee in the amount of $4,200 per CUSIP to an Underwriter at the time of a Non-Conforming Structured Security becoming eligible for DTC services.[12] At the same time, the OA was amended to add a requirement for Underwriters and Paying Agents to submit the Attestation [13] to identify Non-Conforming Structured Securities as they are made eligible for DTC services.[14] In addition, DTC expanded the distribution of ''Report Cards'' to Paying Agents relating to the tracking and evaluating of Paying Agent performance with regard to timeliness and accuracy of payment rate reporting on Structured Securities, to make the Report Cards available to the public on DTC's website.[15]

The volume of new issuances of Structured Securities coming to market, including those relating to mortgages and other asset types, have significantly declined since 2007 and the beginnings of the financial crisis.[16] The decline has been attributed, at least in part, to structural changes made to the Structured Securities marketplace that have occurred since the financial crisis, including regulatory changes related to credit-related risk controls for the underwriting of Structured Securities and standards by which loans that underlie Structured Securities are originated.[17] At DTC, volumes of Structured Securities processed at DTC ranged from 52,000–55,000 issuances per year from 2004–2008. Since that time, due largely to changes in the marketplace, volumes of Structured Securities issuances have steadily dropped with average volumes since 2009 falling below 10,000 issuances per year. Additionally, the number of Non-Conforming Structured Securities at DTC has fallen as a percentage of overall Structured Securities issuances. Currently 6.4% of the active Structured Securities on DTC's security master file are marked as Non-Conforming Structured Securities, but since the beginning of 2014 less than 1% of newly issued Structured Securities have been

[5] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[6] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/special-letters/Non-Conforming-Structured-Securities-Attestation-Letter.pdf* (Non-Conforming Structured Securities Attestation). A Paying Agent and Underwriter must provide an Attestation to DTC to inform DTC when a Security to be made eligible for DTC services is a Non-Conforming Structured Security. The Attestation also documents the understanding of the Underwriter that DTC would charge the Exception Processing Fee with regard to the Non-Conforming Structured Security.

[7] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf.*

[8] Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf,* and the OA, *supra* note 5.

[9] *Supra* note 5.

[10] *Supra* note 6.

[11] *Supra* note 7.

[12] *See* Securities Exchange Act Release No. 57193 (January 24, 2008), 73 FR 5614 (January 30, 2008).

[13] *Supra* note 6.

[14] *See* Securities Exchange Act Release No. 57542 (March 20, 2008), 73 FR 16403 (March 27, 2008).

[15] *See id.*

[16] *See* An He & Bruce Mizrach, FINRA Office of the Chief Economist, Analysis of Securitized Asset Liquidity (June 2017) at 5, *available at https://www.finra.org/sites/default/files/Analysis_of_Securitized_Asset_Liquidity.pdf.*

[17] *See* S&P Global Ratings, Ten Years after the Financial Crisis, Global Securitization Lending Transformed by Regulation and Economic Growth (July 21, 2017) at 1–6, *available at https://www.spratings.com/documents/20184/1393097/SF10Years/b0f1300a-5ed5–407d-8d3b-77fdc3b1f20c.*

marked as Non-Conforming Structured Securities.

Proposed Changes to the OA and the Fee Guide

The processing of the Attestation by DTC increased the amount of resources necessary for DTC staff to facilitate Non-Conforming Structured Securities becoming eligible for DTC services. However, the reduction of new issues of Non-Conforming Structured Securities, as described above, has reduced the resources required by DTC, including manual processing of paperwork and data entries in the DTC system by DTC staff, to efficiently process Non-Conforming Structured Securities. In this regard, DTC would be able to balance its costs associated with the processing of Non-Conforming Structured Securities with its service fees applicable to securities processing,[18] without additionally charging an Exception Processing Fee. Therefore, DTC proposes to eliminate the Exception Processing Fee, which would facilitate DTC's ability to balance its costs with its service fees. Also, because DTC proposes to eliminate the Exception Processing Fee, DTC has determined that it is no longer necessary for it to obtain an Attestation from a Paying Agent and Participant by which they notify DTC that an issue comprises Non-Conforming Structured Securities and the Participant agrees to pay the Exception Processing Fee.

Therefore, pursuant to the proposed rule change, DTC would modify (i) the OA to eliminate the requirement that a Paying Agent, and an Underwriter, for Non-Conforming Structured Securities, submit an Attestation relating to the Non-Conforming Structured Securities; and (ii) the Fee Guide to eliminate the Exception Processing Fee.

Since, pursuant to the proposed rule change, DTC would no longer receive Attestations from Paying Agents and Underwriters notifying DTC that Structured Securities are non-conforming, and therefore would not distinguish between Non-Conforming Structured Securities and other Structured Securities for the purposes described above, DTC would amend the OA to eliminate a provision that excludes Non-Conforming Structured Securities from statistics published by DTC regarding the timeliness of submission of rate information for Structured Securities. In this regard, the OA would be amended to remove text providing for the exclusion of Non-Conforming Structured Securities from the Report Card results. DTC believes the due to the small percentage of Non-Conforming Structured Securities issued in relation to all other Structured Securities issued, that Non-Conforming Structured Securities can be included in the Report Cards without materially impacting results reflected in the Report Cards.

Implementation Timeframe

DTC would implement the proposed changes no earlier than thirty (30) days after the date of filing, or such shorter time as the Commission may designate, and no later than July 10, 2019. DTC would announce the implementation date of the proposed changes by Important Notice, posted to its website.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act[19] requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision of the Act because by amending (i) the OA to eliminate the requirement for the Attestation and (ii) the Fee Guide to remove the Exception Processing Fee, the proposed rule change would eliminate extra steps necessary for Participants to request eligibility for Non-Conforming Structured Securities that are not otherwise required for other Structured Securities. By eliminating the requirements as described in (i) and (ii) above, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions by facilitating the ability of Participants to make Non-Conforming Structured Securities eligible for DTC's book-entry settlement services, without requiring the Participant to take the extra step of submitting an Attestation and incurring the cost associated with the Exception Processing Fee as part of the standard eligibility process for such Securities.

DTC believes the removal of text from the OA that provides for the exclusion of Non-Conforming Structured Securities from the Report Card, as described above, would be consistent with the above cited provision of the Act. While the inclusion of Non-Conforming Structured Securities in the Report Cards would not have a material effect on results reflected in Report Cards, no longer excluding Non-Conforming Structured Securities results would allow Report Cards to provide for a complete overview with respect to timeliness and accuracy of payment rate reporting for Participants with respect to all Structured Securities processed at DTC. By providing more complete information with respect to payment rate reporting for Structured Securities, the proposed rule change would allow Report Cards to include information that would facilitate (i) Participants' understanding of the timeliness and accuracy of payment rate reporting on Structured Securities and (ii) decisions they may they might make with respect to transactions in Structured Securities. Therefore, by facilitating Participants' understanding of payment rate information in this regard, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions consistent with the Act.

Section 17A(b)(3)(D) of the Act[20] requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. As described above, DTC would eliminate the Exception Processing Fee pursuant to the proposed rule change because the reduction of new issues of Non-Conforming Structured Securities has reduced the resources required by DTC to efficiently process Non-Conforming Structured Securities. In this regard, DTC would be able to cover its costs associated with the processing of Non-Conforming Structured Securities with its service fees applicable to securities processing, without additionally charging an Exception Processing Fee. Therefore, DTC believes that the proposed rule change provides for the equitable allocation of reasonable fees among its participants by eliminating a fee that is no longer necessary for DTC to charge to balance its costs associated with the processing of Non-Conforming Structured Securities with its service fees applicable to securities processing.[21]

(B) Clearing Agency's Statement on Burden on Competition

DTC believes that the proposed rule change could impact competition.[22] DTC does not believe the proposed rule change would impose any burden on competition, because as discussed above, the volume of new issuances in Non-Conforming Structured Securities is very low compared to Structured Securities generally, and the proposed changes described above would not have a material effect with respect to (a) the obligations and costs of Participants utilizing DTC services, or (b)

[18] *See* Fee Guide, *supra* note 7.

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 15 U.S.C. 78q–1(b)(3)(D).

[21] *See* Fee Guide, *supra* note 7.

[22] 15 U.S.C. 78q–1(b)(3)(I).

information included on Report Cards. DTC believes the proposed rule change may promote competition, because the reduced cost to Participants to request eligibility for Non-Conforming Structed Securities, due to the proposed elimination of the Exception Processing Fee, may facilitate a Participant's ability to request eligibility for such Securities at DTC.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. DTC will notify the Commission of any written comments received by DTC.

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[23] and Rule 19b–4(f)(6) thereunder.[24]

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–DTC–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.

All submissions should refer to File Number SR–DTC–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 the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2019–002 and should be submitted on or before July 10, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12924 Filed 6–18–19; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33509; File No. 812–14854]

Tortoise Tax-Advantaged Social Infrastructure Fund, Inc. and Tortoise Credit Strategies, LLC

June 13, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose early withdrawal charges and asset-based distribution and shareholder service fees.

APPLICANTS: Tortoise Tax-Advantaged Social Infrastructure Fund, Inc. (the ''Initial Fund'') and Tortoise Credit Strategies, LLC (the ''Adviser'').

FILING DATES: The application was filed on December 18, 2017 and amended on June 14, 2018, November 5, 2018 and April 24, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 8, 2019, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: Jeremy Goff, Tortoise Credit Strategies, LLC, 11550 Ash Street, Suite 300, Leawood, KS 66211.

FOR FURTHER INFORMATION CONTACT: Asen Parachkevov, Senior Counsel, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://*

www.sec.gov/search/search.htm or by calling (202) 551–8090.

Applicants' Representations

1. The Initial Fund is a Maryland corporation that is registered under the Act as a continuously offered, non-diversified, closed-end management investment company that operates as an interval fund. The Initial Fund's investment objective is to seek to generate attractive total return with an emphasis on tax-advantaged income.

2. The Adviser is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Initial Fund.

3. The applicants seek an order to permit the Funds (as defined below) to issue multiple classes of shares and to impose early withdrawal charges and asset-based distribution and shareholder service fees with respect to certain classes.

4. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,[1] acts as investment adviser, distributor or underwriter and which operates as an interval fund pursuant to rule 23c–3 under the Act and/or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'') (each, a ''Future Fund'' and together with the Initial Fund, each a ''Fund'' and collectively, the ''Funds'').[2]

5. The Initial Fund is currently conducting a continuous offering of its Institutional Class I common stock (the ''Class I shares''). Additional offerings by the Initial Fund or any Future Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange nor publicly traded. There is currently no secondary market for the shares and the Funds expect that no secondary market will develop.

6. If the requested relief is granted, the Initial Fund anticipates it will continuously offer additional classes of shares, with each class having its own fee and expense structure. Because of the different distribution and/or shareholder services fees, services and any other class expenses that may be attributable to each class of shares of the Initial Fund, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

7. Applicants state that shares of a Fund may be subject to a repurchase fee at a rate no greater than 2% of a shareholder's repurchase proceeds if the interval between the date of purchase of the shares and the valuation date with respect to the repurchase of those shares is less than one year. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate a repurchase fee, it will do so consistently with the requirements of rule 22d–1 under the Act and as if such fund were an open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of, the repurchase fee will apply uniformly to all shareholders of such Fund regardless of class. Repurchase fees will apply equally to all classes of shares of a Fund, consistent with section 18 of the Act and rule 18f–3 thereunder.

8. The Initial Fund has adopted a fundamental policy to offer to repurchase between 5% and 25% of its outstanding shares at net asset value on a quarterly basis. Such repurchase offers will be conducted pursuant to rule 23c–3 under the Act. Each of the Future Funds will likewise adopt fundamental investment policies in compliance with rule 23c–3 and make repurchase offers to its shareholders at periodic intervals and/or provide periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act.[3] Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund.

9. Applicants represent that any asset-based service and distribution fees for each class of shares will comply with the provisions of FINRA Rule 2341(d) (''FINRA Sales Charge Rule'').[4] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[5] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[6]

10. Each Fund will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to each Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

11. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect the expenses associated with the distribution and/or shareholder services plan of that class (if any), shareholder services fees attributable to that class (if any), including transfer agency fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f-3 under the Act as if it were an open-end investment company.

12. Applicants state that each Fund may impose an early withdrawal charge on shares submitted for repurchase that have been held less than a specified

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Fund relying on this relief in the future will do so in compliance with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[3] Applicants submit that rule 23c–3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act of 1933, as amended.

[4] All references in the application to the FINRA Sales Charge Rule include any Financial Industry Regulatory Authority successor or replacement rule to the FINRA Sales Charge Rule.

[5] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[6] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (June 20, 2006) (adopting release). See also Rules 12d1–1, *et seq.* of the Act.

period and may waive the early withdrawal charge for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the early withdrawal charge (and any waivers or scheduled variations of the early withdrawal charge) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Funds were open-end investment companies.

13. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an early withdrawal charge as if it were a contingent deferred sales load.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2) of the Act provides that a closed-end investment company may not issue or sell a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits an ''interval fund'' to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose early withdrawal charges on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the early withdrawal charges they intend to impose are functionally similar to contingent deferred sales loads imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose contingent deferred sales loads, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of contingent deferred sales loads where there are adequate safeguards for the investor and state that the same policy considerations support imposition of early withdrawal charges in the interval fund context. In addition, applicants state that early withdrawal charges may be necessary for the distributor to recover distribution costs. Applicants represent that any early withdrawal charge imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose early withdrawal charges in accordance with the requirements of Form N–1A concerning contingent deferred sales loads.

Asset-Based Distribution and Shareholder Service Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection

with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution and shareholder service fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and shareholder service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12905 Filed 6–18–19; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15988 and #15989; Minnesota Disaster Number MN–00068]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Minnesota

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 MINNESOTA (FEMA–4442–DR), dated 06/12/2019.

Incident: Severe Winter Storm, Straight-line Winds, and Flooding.

Incident Period: 03/12/2019 through 04/28/2019.

DATES: Issued on 06/12/2019.

Physical Loan Application Deadline Date: 08/12/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 03/12/2020.

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 06/12/2019, 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: Big Stone, Blue Earth, Brown, Chippewa, Clay, Cottonwood, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Grant, Houston, Jackson, Kittson, Lac Qui Parle, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, McLeod, Mower, Murray, Nicollet, Nobles, Norman, Olmsted, Pennington, Pipestone, Polk, Ramsey, Red Lake, Redwood, Renville, Rock, Roseau, Scott, Sibley, Steele, Stevens, Swift, Traverse, Wabasha, Waseca, Washington, Watonwan, Wilkin, Winona, Yellow Medicine, and the Prairie Island Indian Community, Red Lake Band of Chippewa, Upper Sioux Community, and the White Earth Nation.

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 15988B and for economic injury is 159890.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12929 Filed 6–18–19; 8:45 am]

BILLING CODE 8206–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15990 and #15991; Idaho Disaster Number ID–00078]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Idaho

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 Idaho (FEMA—4443—DR), dated 06/12/2019.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 04/07/2019 through 04/13/2019.

DATES: Issued on 06/12/2019.

Physical Loan Application Deadline Date: 08/12/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 03/12/2020.

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 06/12/2019, 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: Adams, Idaho, Latah, Lewis, Valley and the Nez Perce Tribe.

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 159906 and for economic injury is 159910.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12930 Filed 6–18–19; 8:45 am]

BILLING CODE 8206–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15973 and #15974; Oklahoma Disaster Number OK–00130]

Presidential Declaration Amendment of a Major Disaster for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of OKLAHOMA (FEMA–4438–DR), dated 06/01/2019.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 05/07/2019 and continuing.

DATES: Issued on 06/11/2019.

Physical Loan Application Deadline Date: 07/31/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 03/02/2020.

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: The notice of the President's major disaster declaration for the State of OKLAHOMA, dated 06/01/2019, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Delaware, Kay, Mayes, Okmulgee, Payne, Pottawatomie, Sequoyah.

Contiguous Counties (Economic Injury Loans Only):

OKLAHOMA: Adair, Grant, Le Flore, Pontotoc, Seminole.

ARKANSAS: Benton, Crawford, Sebastian.

KANSAS: Sumner.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12911 Filed 6–18–19; 8:45 am]

BILLING CODE 8206–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15929 and #15930; IOWA Disaster Number IA–00087]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–4421–DR), dated 04/05/2019.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2019 through 05/16/2019.

DATES: Issued on 06/11/2019.

Physical Loan Application Deadline Date: 06/04/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 01/06/2020.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of IOWA, dated 04/05/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Buchanan, Clayton, Clinton, Des Moines, Jackson, Jones, Lee, Louisa, Mitchell, Muscatine, Ringgold, Scott, Winnebago, Worth.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12912 Filed 6–18–19; 8:45 am]

BILLING CODE 8206–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15992 and #15993; North Dakota Disaster Number ND–00069]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of NORTH DAKOTA

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 NORTH DAKOTA (FEMA–4444–DR), dated 06/12/2019.

Incident: Flooding.

Incident Period: 03/21/2019 through 04/28/2019.

DATES: Issued on 06/12/2019.

Physical Loan Application Deadline Date: 08/12/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 03/12/2020.

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 06/12/2019, 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: Adams, Barnes, Cass, Dickey, Emmons, Grand Forks, Grant, Hettinger, LaMoure, Logan, McKenzie, Morton, Pembina, Ransom, Richland, Sargent, Steele, Traill, Walsh.

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 159926 and for economic injury is 159930.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12931 Filed 6–18–19; 8:45 am]

BILLING CODE 8206–03–P

DEPARTMENT OF STATE

[Public Notice: 10800]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: "Auschwitz-Birkenau Artifacts" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Auschwitz-Birkenau Artifacts,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Los Angeles Museum of the Holocaust, Los Angeles, California, from on or about July 2, 2019, until on or about June 16, 2022, 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. 2019–12952 Filed 6–18–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10796]

60-Day Notice of Proposed Information Collection: Application for A, G, or NATO Visa

ACTION: Notice of request for public comment.

SUMMARY: The Department of State (Department) is seeking Office of Management and Budget (OMB) approval for the information collection described below. 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 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to August 19, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2019–0021'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for A, G, or NATO Visa.
- *OMB Control Number:* 1405–0100.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–1648.
- *Respondents:* Foreign Government Officials.
- *Estimated Number of Respondents:* 30,000.
- *Estimated Number of Responses:* 30,000.
- *Average Time per Response:* 15 Minutes. As the form is relatively short, 15 minutes is the most recent average time per response calculated.
- *Total Estimated Burden Time:* 7,500 Hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

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 Department of State will use Form DS–1648 to elicit information from applicants who are applying for an A, G, or NATO visa in the United States, excluding applicants for an A–3, G–5 or NATO–7 visa. Sections 101(a)(15)(A) and (G) of the Immigration and Nationality Act (INA), and 22 CFR 41.25, describe the criteria for these nonimmigrant visa classifications.

Methodology

The DS–1648 will be submitted electronically to the Department. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing.

Edward J. Ramotowski,

Deputy Assistant Secretary.

[FR Doc. 2019–12950 Filed 6–18–19; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 10797]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Finding Light in the Darkness'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Finding Light in the Darkness,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Holocaust Center for Humanity, Seattle, Washington, from on or about June 24, 2019, until on or about June 16, 2022, 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. 2019–12951 Filed 6–18–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 472]

Delegation of Authority to the Director of the Foreign Service Institute Administration of the Advisory Committee on Historical Diplomatic Documentation (Foreign Relations of the United States Series)

By virtue of the authority vested in the Secretary of State, including Section 1 of the Department of State Basic Authorities Act, as amended (22 U.S.C. 2651a), and to the extent authorized by law, I hereby delegate to the Director, Foreign Service Institute, the authorities and functions related to the administration of the Advisory Committee on Historical Diplomatic Documentation, including submission of the *Foreign Relations of the United States* series, pursuant to 22 U.S.C. 4351 *et seq.*

The Secretary, the Deputy Secretary, and the Under Secretary and Deputy Under Secretary for Management may at any time exercise any authority or function delegated herein.

Section 5 of Delegation of Authority 193, dated January 7, 1992, is hereby rescinded.

This delegation of authority shall be published in the **Federal Register**.

Dated: June 10, 2019.

Michael R. Pompeo,

Secretary of State, Department of State.

[FR Doc. 2019–13037 Filed 6–18–19; 8:45 am]

BILLING CODE 4710–20–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36284]

Seven County Infrastructure Coalition—Rail Construction & Operation—in Utah, Carbon, Duchesne, and Uintah Counties, Utah

AGENCY: Surface Transportation Board.

ACTION: Notice of intent to prepare an environmental impact statement (EIS), availability of the draft scope of study for the EIS, scoping meetings, and request for comments.

SUMMARY: The Seven County Infrastructure Coalition (Coalition) plans to file a request with the Surface Transportation Board (Board) for authority to construct and operate an approximately 80-mile rail line between two terminus points in the Uinta Basin near Myton, Utah, and Leland Bench, Utah, and the interstate rail network. The construction and operation of the proposed rail line has the potential to result in significant environmental impacts; therefore, the Board's Office of Environmental Analysis (OEA) has determined that the preparation of an EIS is appropriate pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended. The purpose of this notice is to inform stakeholders—including members of the public; tribes; federal, state, and local agencies; environmental groups; and potential shippers—interested in or potentially affected by the proposed project. OEA will hold public scoping meetings as part of the NEPA process. Comments submitted during scoping will assist OEA in defining the range of alternatives and potential impacts to be considered in the EIS. OEA has developed a Draft Scope of Study for the EIS for stakeholder review and comment. Public meeting dates and locations, along with the Draft Scope of Study, are provided below.

DATES: Comments on the Draft Scope of Study for the EIS are due by August 3, 2019. See the **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for meeting addresses. Scoping comments submitted by mail should be addressed to Joshua Wayland, Surface Transportation Board, c/o 9300 Lee Highway, Fairfax, VA 22031, Attention: Environmental filing, Docket No. FD 36284. Scoping comments may also be filed electronically on the Board's website, *https://www.stb.gov,* by clicking on the ''E–FILING'' link or on the Board-sponsored project website at *www.uintabasinrailwayeis.com.* Please refer to Docket No. FD 36284 in all correspondence, including e-filings, addressed to the Board.

FOR FURTHER INFORMATION CONTACT: Joshua Wayland, Office of Environmental Analysis, Surface Transportation Board, 395 E Street SW, Washington, DC 20423, or call the OEA's toll-free number for the project at 855–826–7596. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339. The website for the Board is *https://www.stb.gov.* For further information about the Board's environmental review process and the Environmental Impact Statement (EIS), you may also visit the Board-sponsored project website at *www.uintabasinrailwayeis.com.*

SUPPLEMENTARY INFORMATION:

Background

The Coalition proposes to construct and operate an approximately 80-mile rail line between two terminus points in the Uinta Basin near Myton, Utah, and

Leland Bench, Utah, and the interstate rail network. The Coalition anticipates that shippers would use the proposed rail line to transport crude oil, gilsonite, coal, and other mineral and agricultural products out of the Uinta Basin to markets across the United States. The proposed rail line could also be used to move products and commodities, such as fracturing sand, proppant, steel, and machinery, to markets in the Uinta Basin. Based on current market conditions, the Coalition estimates that approximately 7 trains would move along the proposed rail line per day, on average, including loaded and unloaded trains, or 3.5 trains per day in each direction. Because the construction and operation of the proposed rail line could result in significant environmental impacts, OEA is hereby notifying interested stakeholders—including federal, state, and local agencies; tribes; environmental groups; potential shippers; and the public—that OEA intends to prepare an EIS to analyze the Coalition's proposal, pursuant to NEPA (42 U.S.C. 4321 *et seq.*).

The Coalition's preferred route would extend generally southwest from terminus points near Myton, Utah, and Leland Bench, Utah, to a connection with an existing rail line owned by Union Pacific Railroad Company (UP) near Kyune, Utah. It would generally parallel U.S. Route 191 through Indian Canyon and would be located within Utah, Carbon, Duchesne, and Uintah Counties in Utah (Indian Canyon Route). The Coalition has also identified two potential alternatives to the Indian Canyon Route that the Coalition believes would be economically and technically feasible. One of those proposed alternatives would connect the terminus points near Myton and Leland Bench to the UP rail line near Kyune by following Wells Draw and Argyle Canyon, crossing Utah, Carbon, Duchesne, and Uintah Counties in Utah (Wells Draw Route). The other proposed alternative would extend eastward from the terminus points near Myton and Leland Bench to a connection with a UP rail line near Craig, Colorado, and would cross Uintah and Duchesne Counties in Utah, as well as Moffat and Rio Blanco Counties in Colorado (Craig Route). Additional information regarding the proposed project, including detailed descriptions of the Indian Canyon, Wells Draw, and Craig Routes, are set forth in the Draft Scope of Study below.

In compliance with NEPA and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management's (BLM's) Little Snake, White River, Vernal, Price, and Salt Lake Field Offices intend to participate as a cooperating agency on this EIS with the Board. Construction and operation of the Indian Canyon Route or the Wells Draw Route would require an issuance of a right-of-way across BLM-managed lands and could require amendments to the Vernal, Price, and Salt Lake Field Offices Resource Management Plans (RMPs). Construction and operation of the Craig Route would also require issuance of a right-of-way across BLM-managed lands and could require amendments to the Little Snake and White River RMPs. Therefore, if the Indian Canyon, Wells Draw, and Craig Routes are carried forward for analysis in the EIS, the EIS will include analysis of the potential RMP amendments.

In compliance with NEPA and the U.S. Forest Service's (Forest Service's) 2012 Planning Rule, the Forest Service's Ashley National Forest also intends to participate as a cooperating agency on this EIS with the Board. Because the Indian Canyon Route would cross National Forest System (NFS) lands, Forest Service approval for permitting the rail line right-of-way may be required. The Forest Service decision may also include amending the Ashley Forest Land and Resource Management Plan (Ashley Forest Plan). Therefore, the EIS will include analysis of that potential plan amendment.

Environmental Review Process

This notice initiates the public scoping period for the EIS. To begin the scoping process, OEA has developed a Draft Scope of Study that OEA is making available for public review and comment. Oral and written comments submitted during scoping will assist OEA in identifying other agencies with an interest or expertise in the project and defining the range of alternatives and potential impacts on the human and natural environment to be considered in the EIS. Public meeting dates and locations, as well as instructions for submitting written comments are provided below.

To date, OEA has invited several agencies to participate in this EIS process as cooperating agencies on the basis of their special expertise or jurisdiction by law. These agencies are the BLM, the Forest Service, the U.S. Army Corps of Engineers, the Bureau of Indian Affairs, and the State of Utah Public Lands Policy Coordinating Office. OEA is also initiating government-to-government consultation with the following potentially affected tribes.

- Ute Indian Tribe of the Uintah and Ouray Reservation, Utah
- Apache Tribe of Oklahoma
- Eastern Shoshone Tribe of the Wind River Reservation, Wyoming
- Confederated Tribes of the Goshute Reservation, Nevada and Utah
- Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
- Hopi Tribe of Arizona
- Navajo Nation, Arizona, New Mexico, and Utah
- Northwestern Band of the Shoshone Nation, Utah
- Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)
- Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho
- Skull Valley Band of Goshute Indians
- White Mesa/Ute Mountain Ute Tribe, Utah and Colorado

Additional cooperating agencies and interested tribes may be identified during the scoping process.

Interested parties are invited to submit written comments on the Draft Scope of Study, potential alternative routes for the proposed rail line, and other environmental issues and concerns during the 45-day public comment period, which ends on August 3, 2019, to assure full consideration during the scoping process. OEA will issue a Final Scope of Study after the close of the scoping comment period. After issuing the Final Scope of Study, OEA will prepare a Draft EIS for the project. The Draft EIS will address the environmental issues and concerns identified during the scoping process and assess and compare potential alternatives. It will also contain OEA's preliminary recommendations for environmental mitigation measures. The Draft EIS will be made available upon its completion for review and comment by the public, government agencies, and other interested parties. OEA will prepare a Final EIS that considers comments on the Draft EIS. In reaching its decision in this case, the Board will take into account the Draft EIS, the Final EIS, and all environmental comments that are received.

Public Scoping Meetings

OEA will hold six public scoping meetings in communities in the project area during the public comment period. The public scoping meetings will be held at the following locations on the dates listed.

- Monday July 15, 2019, 3–5 p.m. at the Ute Tribal Auditorium, 910 South 7500 East, Fort Duchesne, Utah.

• Tuesday July 16, 2019, 5–7 p.m. at the Moffat County Fairgrounds Pavilion, 640 E Victory Way, Craig, Colorado.

• Wednesday July 17, 2019, 5–7 p.m. at the Carbon County Event Center, 450 S Fairgrounds Road, Price, Utah.

• Thursday July 18, 2019, 11 a.m.–1 p.m. at the Grace Event Center, 1024 W Highway 40, Roosevelt, Utah.

• Thursday July 18, 2019, 5–7 p.m. at the Uintah Conference Center, 313 East 200 South, Vernal, Utah.

• Friday July 19, 2019, 10 a.m.–12 p.m. at Radisson Hotel Salt Lake City Downtown, 215 West South Temple, Salt Lake City, Utah.

The scoping meetings will be held in an open house format for the first half hour, followed by a brief presentation by OEA and an opportunity to provide public comments. A court reporter will be present to record the oral comments made during the meeting. We ask that public demonstrations—either in support of or opposed to the proposals—including signage, posters, and demonstrations, occur outside the meeting room. The meeting locations comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). Persons that need special accommodations should telephone OEA's toll-free number for the project at 855–826–7596.

Possible Resource Management Plan Amendments

The proposed rail line could potentially cross BLM-administered lands for which a rail right-of-way may not currently be in conformance with the applicable RMPs. Therefore, the BLM may need to consider amending one or more RMPs to permit the rail line right-of-way. If so, the BLM intends to use the EIS to support decision-making regarding the issuance of a right-of-way and to consider amending the current Little Snake RMP (2011), White River RMP (1997), Price RMP (2008), Vernal RMP (2008), and the Salt Lake Pony Express RMP (1990), which may be necessary for railroad construction and operation, depending on which, if any, alternative route is ultimately approved by the Board. Plan amendments (see 43 CFR 1610.5–5) change one or more of the terms, conditions, or decisions of an approved land use plan. These decisions may include those relating to desired outcomes; measures to achieve desired outcomes, including resource restrictions; or land tenure decisions. Plan amendments are required to consider any proposal or action that does not conform to the current plan. BLM will hold a protest period following the publication of the Final EIS if the authorized alternative would require amendments to BLM RMPs. Additional information regarding the plan amendment process can be found in the BLM's Land Use Planning Handbook (*https://www.blm.gov/policy/handbooks*).

Possible Forest Land Management Plan Amendment

The proposed rail line could potentially cross NFS lands administered by the Ashley National Forest in Utah. Depending on which alternative is selected and the final engineering of that alternative, Forest Service approval for permitting the rail line right-of-way and associated construction and operation on NFS lands may be required. The Forest Service decision may also include amending the Ashley Forest Plan to ensure that approval of permitting the rail line right-of-way would be consistent with the Ashley Forest Plan. The Forest Service will use the EIS to inform the decision on the necessary approvals and, if needed, the Ashley Forest Plan amendment. In the event that the Forest Service determines that it intends to amend the Ashley Forest Plan, the Forest Service hereby gives notice that the scope is expected to be limited to the project only, and the scale of the amendment is the project area that occurs on NFS lands. The Forest Service also hereby gives notice that the substantive requirements of the 2012 Planning Rule (36 CFR part 219) likely to be directly related and, therefore, applicable to the Ashley Forest Plan amendments are 36 CFR 219.8(b)(1) and (2) (specifically scenic character), regarding social and economic sustainability, and 36 CFR 219.10(a)(1) (specifically scenery) and (3) (specifically transportation), regarding integrated resource management for multiple use. The Forest Service responsible official is the Ashley Forest Supervisor.

Draft Scope of Study for the EIS

Purpose and Need

As described by the Coalition, the purpose of the proposed rail line is to provide common-carrier rail service connecting the Uinta Basin in northeastern Utah to the interstate common-carrier rail network using a route that would allow the Coalition to attract shippers with a cost-effective rail alternative to trucking. Because the Uinta Basin is surrounded by high mountains and plateaus, the area has limited transportation options at present. Currently, all freight moving into and out of the basin is transported by trucks on the area's limited road network, which includes one north-south two-lane highway (U.S. Highway 191) and one east-west two-lane highway (U.S. Highway 40). The proposed project would provide a new, cost-effective surface transportation option for shippers seeking to transport products and commodities into and out of the Uinta Basin.

The proposed transaction involves a request from the Coalition for Board authority to construct and operate the proposed rail line. The proposed transaction is not a federal government-proposed or sponsored project. Thus, the project's purpose and need should be informed by both the private applicant's goals and the agency's enabling statute—the Interstate Commerce Act as amended by the ICC Termination Act, Public Law 104–188, 109 Stat. 803 (1996), which provides that the Board must approve a construction application unless it finds that the construction is ''inconsistent with the public convenience and necessity.''

Proposed Action and Alternatives

The proposed rail line would extend from a connection with an existing UP rail line near Kyune, Utah to two termini within the Uinta Basin near Myton, Utah and Leland Bench, Utah. It would consist of a single track constructed of continuous-welded rail and would require a right-of-way approximately 100 feet wide along much of its length, although the right-of-way could be substantially wider in some locations. The proposed project would include significant regrading and cut-and-fill to traverse the rugged topography of the project area; new access roads for construction and right-of-way maintenance; several railroad tunnels; and crossings of local roads, streams, trails, and utility corridors.

Based on current market conditions, the Coalition estimates that approximately 7 trains would move along the proposed rail line per day, on average, including loaded and unloaded trains, or 3.5 trains per day in each direction. Rail traffic entering the Uinta Basin would likely move such products and commodities as fracturing sand, proppant, tubular steel, and oil industry machinery from the Midwest, Texas, the Southeast, and ports on the Pacific and Gulf coasts. Outbound trains would likely carry crude oil, gilsonite, coal, and other mineral and agricultural products to markets across the United States.

The EIS will analyze and compare the potential impacts of (1) construction and operation of the proposed rail line, (2) all reasonable and feasible

alternative routes, and (3) the no-action alternative (denial of construction and operation authority). Information provided by the Coalition includes three proposed routes, as described below.

• *Indian Canyon Route.* This 80-mile route would connect an existing UP rail line owned by UP near Kyune, Utah to a terminus points in the Uinta Basin near Myton and Leland Bench. Starting at Leland Bench, approximately 9.5 miles south of Fort Duchesne, Utah, this route would proceed westward, past the South Myton Bench area, until intersecting Indian Canyon approximately two miles south of Duchesne, Utah. After entering Indian Canyon, the route would turn southwest and follow Indian Creek upstream toward its headwaters below Indian Creek Pass, paralleling U.S. Highway 191 for approximately 21 miles. The Indian Canyon Route would use a summit tunnel to pass through the West Tavaputs Plateau and, after emerging from the tunnel, would descend the Roan Cliffs to reach Emma Park, an open grassy area at the base of the Roan Cliffs. The route would then run westward through Emma Park and connect to the UP Provo Subdivision near the railroad timetable station at Kyune. At this time, the Coalition has identified the Indian Canyon Route as its preferred alternative.

• *Craig Route.* This route would be approximately 185 miles long and would connect an existing UP rail line near Axial, Colorado to two terminus points in the Uinta Basin near Myton and Leland Bench. The lines from those two terminus points would meet at a junction approximately four miles north of Leland Bench. From the junction, the Craig Route would proceed generally northward for approximately seven miles, then turn and proceed generally eastward, crossing the Green River approximately five miles south of Jensen, Utah. The route would then proceed southeasterly, entering Colorado approximately three miles northwest of Dinosaur, Colorado and would connect to the Deseret Power Railroad (DPR) south of Dinosaur. The Craig Route would utilize approximately 13 miles of the DPR to proceed eastward and would depart the DPR approximately two miles west of the Deserado Mine. It would then proceed generally eastward to connect to the UP Craig Subdivision near the railroad timetable station at Axial.

• *Wells Draw Route.* This route would be approximately 105 miles long and would connect an existing UP rail line near Kyune to two terminus points in the Uinta Basin near Myton Bench and Leland Bench. The lines from those two terminus points would meet at a junction approximately 6.5 miles south of South Myton Bench. From the junction, the Wells Draw Route would run southward, generally following Wells Draw towards its headwaters. After reaching the headwaters of Wells Draw, the route would turn westward and enter Argyle Canyon. It would remain on the north wall of Argyle Canyon for approximately 25 miles, eventually reaching the floor of the canyon near the headwaters of Argyle Creek. The route would then enter a summit tunnel through the West Tavaputs Plateau and, after emerging from the tunnel, would descend the Roan Cliffs to reach Emma Park. The route would run westward through Emma Park and connect to the UP Provo Subdivision near the railroad timetable station at Kyune.

Currently, the Coalition's preferred route is the Indian Canyon Route. Maps of that proposed route and the proposed alternatives described above are available on the Board-sponsored project website at *www.uintabasinrailwayeis.com.* OEA is interested in scoping comments on potential alternatives to the Coalition's proposed routes and will determine the final set of alternatives to be analyzed in the EIS during the scoping process.

Environmental Impact Analysis

Proposed New Construction and Operation

Analysis in the EIS will address the proposed activities associated with the construction and operation of the proposed rail line and its potential environmental impacts, as appropriate.

Impact Categories

The EIS will analyze potential direct, indirect, and cumulative impacts [1] for the Coalition's proposed construction and operation and each reasonable and feasible alternative on the human and natural environment, or in the case of the no-action alternative, the lack of these activities. Impact areas addressed will include the categories of safety, transportation systems, land use, parks and recreation, biological resources, water resources including wetlands and other waters of the U.S., geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, cultural and historic resources, aesthetics, and environmental justice. Other categories of impact areas may also be included as a result of comments received during the scoping process or on the Draft EIS. The EIS will include a discussion of each impact area assessed as it currently exists in the project area and will address the potential direct, indirect impacts, and cumulative impacts of the Coalition's preferred route and each reasonable and feasible alternative on each impact area as described below.

1. Safety

If the proposed project would adversely or beneficially affect public safety, the EIS will:

a. Analyze the potential for an increase in accidents related to the proposed new rail operations, as appropriate.

b. Analyze the potential for increased probability of train accidents, as appropriate.

c. Evaluate the potential for disruption and delays to the movement of emergency vehicles.

d. Propose mitigative measures to minimize or eliminate potential project impacts on safety, as appropriate.

2. Transportation Systems

Because the proposed project would affect transportation systems, the EIS will:

a. Evaluate the potential impacts resulting from the Coalition's proposed route and each alternative on the existing transportation network in the project area.

b. Propose mitigative measures to minimize or eliminate potential adverse project impacts on transportation systems, as appropriate.

3. Land Use

Because the proposed project would affect land use, the EIS will:

a. Assess potential impacts of the proposed project on public lands, including lands administered by the BLM and Forest Service.

b. Analyze potential plan amendments that may be required to permit the rail right-of-way on public lands.

c. Evaluate potential impacts of the proposed project to the roadless character of Ashley National Forest.

d. Evaluate potential impacts of the Coalition's preferred route and each alternative on existing land use patterns within the project area and identify those land uses that would be potentially impacted by the proposed new rail line construction.

[1] NEPA requires the Board to consider direct, indirect, and cumulative impacts. Direct and indirect impacts are both caused by the action. 40 CFR 1508.8(a) and (b). A cumulative impact is the ''incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.'' 40 CFR 1508.7.

e. Analyze the potential impacts associated with each alternative on land uses identified within the project area. Such potential impacts may include incompatibility with existing land use and conversion of land to railroad use.

f. Propose mitigative measures to minimize or eliminate potential impacts on land use, as appropriate.

4. Parks and Recreation

If the proposed project would adversely or beneficially affect parks and recreational areas, the EIS will:

a. Evaluate existing conditions and the potential impacts of the Coalition's preferred route and each alternative, and their operation, on parks, recreational trails, and other recreational opportunities provided in the project area.

b. Propose mitigative measures to minimize or eliminate potential project impacts on recreational opportunities, as appropriate.

5. Biological Resources

If the proposed project would adversely or beneficially affect biological resources, the EIS will:

a. Evaluate the existing biological resources within the project area, including vegetative communities, wildlife, fisheries, and federal and state threatened or endangered species, and analyze the potential impacts on these resources resulting from each alternative.

b. Describe any wildlife sanctuaries, refuges, national or state parks, forests, or grasslands, and evaluate the potential impacts on these resources resulting from the Coalition's preferred route and each alternative.

c. Propose mitigative measures to avoid, minimize, or compensate for potential impacts on biological resources, as appropriate.

6. Water Resources

If the proposed project would adversely or beneficially affect water resources, the EIS will:

a. Describe the existing surface water and groundwater resources within the project area, including lakes, rivers, streams, stock ponds, wetlands, and floodplains, and analyze the potential impacts on these resources resulting from the Coalition's preferred route and each alternative.

b. Describe the permitting requirements for the various alternatives with regard to wetlands, stream and river crossings, water quality, floodplains, and erosion control.

c. Propose mitigative measures to avoid, minimize, or compensate for potential project impacts on water resources, as appropriate.

7. Geology and Soils

If the proposed project would adversely or beneficially affect geology and soils, the EIS will:

a. Describe the geology, soils, and seismic conditions found within the project area, including unique or problematic geologic formations or soils, prime farmland, and hydric soils, and analyze the potential impacts on these resources resulting from the Coalition's proposed route and each alternative.

b. Evaluate potential measures employed to avoid or construct through unique or problematic geologic formations or soils.

c. Propose mitigative measures to minimize or eliminate potential project impacts on geology and soils, as appropriate.

8. Air Quality

If the proposed project would adversely or beneficially affect air quality, the EIS will:

a. Evaluate the air emissions from the potential operation of trains on the Uinta Basin Railway, including potential greenhouse gas emissions, as appropriate.

b. Evaluate the potential emissions from the freighted product, as appropriate.

c. Evaluate the potential air quality impacts resulting from new rail line construction activities.

d. Propose mitigative measures to minimize or eliminate potential project impacts on air quality, as appropriate.

9. Noise and Vibration

If the proposed project would result in noise and vibration impacts, the EIS will:

a. Describe the potential noise and vibration impacts during new rail line construction resulting from the Coalition's preferred route and each alternative.

b. Describe the potential noise and vibration impacts of new rail line operation resulting from each alternative.

c. Propose mitigative measures to minimize or eliminate potential project impacts on sensitive noise receptors, as appropriate.

10. Energy Resources

If the proposed project would adversely or beneficially affect energy resources, the EIS will:

a. Describe and evaluate the potential impact of the proposed project on the distribution of energy resources in the project area resulting from the Coalition's preferred route and each alternative, including petroleum and gas pipelines and overhead electric transmission lines.

b. Propose mitigative measures to minimize or eliminate potential project impacts on energy resources, as appropriate.

c.

11. Socioeconomics

If the proposed project would result in adverse or beneficial socioeconomic impacts, the EIS will:

a. Analyze the effects of a potential influx of construction workers to the project area and the potential increase in demand for local services interrelated with natural or physical environmental effects.

b. Propose mitigative measures to minimize or eliminate potential project-related adverse impacts on social and economic resources, as appropriate.

12. Cultural and Historic Resources

If the proposed project would adversely or beneficially affect cultural and historic resources, the EIS will:

a. Identify historic buildings, structures, sites, objects, or districts eligible for listing on or listed on the National Register of Historic Places within the area of potential effects for the Coalition's preferred route and each alternative (built-environment historic properties) and analyze potential project impacts on them.

b. Identify properties of traditional religious and cultural importance to Indian tribes (Traditional Cultural Properties) and prehistoric or historic archaeological sites evaluated as potentially eligible, eligible, or listed on the National Register of Historic Places (archaeological historic properties) within the area of potential effects for the Coalition's preferred route and each alternative, and analyze potential project impacts on them.

c. Propose measures to avoid, minimize, or mitigate potentially adverse project impacts on Traditional Cultural Properties and built-environment historic properties, archaeological historic properties, and cultural and historic resources, as appropriate.

13. Aesthetics

If the proposed project would have adverse or beneficial aesthetic impacts, the EIS will:

a. Describe the potential impacts of the proposed project on any areas identified or determined to be of high visual quality.

b. Analyze visual impacts associated with the project and conformance with Forest Service and BLM visual resource classifications.

c. Describe the potential impacts of the proposed project on any waterways considered for or designated as wild and scenic.

d. Propose mitigative measures to minimize or eliminate potential project impacts on aesthetics, as appropriate.

14. Environmental Justice

If the proposed project would adversely or beneficially affect environmental justice communities, the EIS will:

a. Evaluate the potential impacts resulting from the Coalition's preferred route and each alternative on local and regional minority and low-income populations.

b. Propose mitigative measures to minimize or eliminate potential project impacts on environmental justice populations, as appropriate.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–12836 Filed 6–18–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36314]
[Docket No. FD 36315]

The Kansas City Southern Railway Company—Temporary Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company—Temporary Trackage Rights Exemption—The Kansas City Southern Railway Company

The Kansas City Southern Railway Company (KCS) and Norfolk Southern Railway Company (NSR) (collectively, Applicants), Class I rail carriers, have filed a joint verified notice of exemptions under 49 CFR 1180.2(d)(8) for the acquisition of temporary overhead trackage rights (1) by KCS over an approximately 105.2-mile rail line of NSR between St. Louis, Mo. (NSR milepost S5.0), and Mexico, Mo. (NSR milepost S110.2), and (2) by NSR over an approximately 156.3-mile rail line of KCS between Mexico, Mo. (KCS milepost 325.7), and Rock Creek Junction in Kansas City, Mo. (KCS milepost 482.0), pursuant to the terms of a Temporary Trackage Rights Agreement dated June 7, 2019 (Agreement).[1]

Applicants state that the purpose of the temporary trackage rights is to accommodate their emergency detour operations between Kansas City and St. Louis on account of severe flooding in Missouri and thus permit continued rail service for both carriers while the impacts of flooding continue and during recovery. They state that the temporary trackage rights will expire on August 31, 2019.

Applicants concurrently filed a petition for waiver of the 30-day period under 49 CFR 1180.4(g) to allow the proposed temporary trackage rights to become effective immediately. By decision served June 13, 2019, the Board granted Applicants' request. As a result, these exemptions are now effective and will expire on August 31, 2019.

As a condition to these exemptions, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

If the verified notice contains false or misleading information, the exemptions are void ab initio. Petitions to revoke the exemptions under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemptions.

All pleadings, referring to Docket Nos. FD 36314 and FD 36315, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Applicants' representatives: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue NW, Suite 300, Washington, DC 20037 (for KCS) and Garrett D. Urban, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510 (for NSR).

According to Applicants, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and historic reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 13, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2019–12966 Filed 6–18–19; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted copy of the Agreement is attached to the verified notice. An unredacted copy has been filed under seal along with a motion for protective order pursuant to 49 CFR 1104.14. That motion is addressed in a separate decision.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0023]

Agency Information Collection Activities; Renewal and Revision of an Approved Information Collection: Hours of Service (HOS) of Drivers Regulations

AGENCY: FMCSA, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to renew an ICR titled, ''Hours of Service (HOS) of Drivers Regulations.'' With some exceptions, the HOS regulations require a motor carrier to install and require each of its drivers subject to the record of duty status (RODS) rule to use an electronic logging device (ELD) to report the driver's RODS. The RODS is critical to FMCSA's safety mission because it helps enforcement officials determine if CMV drivers are complying with the HOS rules limiting driver on-duty and driving time and requiring periodic off-duty time.

DATES: Please send your comments by July 19, 2019. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System Docket Number FMCSA–2019–0023. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division Department of Transportation, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Hours of Service (HOS) of Drivers Regulations.

OMB Control Number: 2126–0001.

Type of Request: Renewal and revision of an information collection.

Respondents: Motor Carriers of Property and Passengers, Drivers of CMVs.

Estimated Number of Respondents: 3.42 million CMV drivers; 540,000 Motor Carriers.

Estimated Time per Response: CMV drivers using technology: 2 minutes.

Estimated Time per Response: Motor Carriers reviewing 50 percent of RODS: 2 minutes.

Frequency of Response: Drivers: 240 days per year; Motor carriers 240 days per year.

Driver Burden Hours: 27.36 million = 3.42 million RODS × 2 minutes/60 × 240 days.

Motor Carrier Burden Hours: 13.68 million = 27.36 million × 50%.

Estimated Total Annual Burden: 41.04 million hours. = 27.36 million + 13.68 million.

Expiration Date: June 30, 2019.

Background

On December 16, 2015, the final rule titled ''Electronic Logging Devices and Hours of Service Supporting Documents'' was published and became effective February 16, 2016 (80 FR 78292). The FMCSA established minimum performance and design standards for ELDs and the mandatory use of these devices by drivers who are subject to the HOS reporting requirements. Drivers who have continuously used compliant automatic on-board recorders (AOBRDs) since December 17, 2017, have until December 16, 2019, to replace the devices with ELDs. The number of AOBRDs still in use is unknown. As a condition of receiving certain federal grants, States agree to adopt and enforce the Federal Motor Carrier Safety Regulations, including the HOS rules, as State law. As a result, State enforcement inspectors use the RODS and supporting documents to determine whether CMV drivers are complying with the HOS rules. In addition, FMCSA uses the RODS during on-site and offsite investigations of motor carriers. And Federal and State courts rely upon the RODS as evidence of driver and motor carrier violations of the HOS regulations. This information collection supports the DOT's Strategic Goal of Safety because the information helps the Agency ensure the safe operation of CMVs in interstate commerce on our Nation's highways.

Renewal of This IC

The current IC burden estimate of the HOS rules, approved by OMB on June 13, 2016, is 99.46 million hours. The expiration date of the current ICR is June 30, 2019. Through this ICR, FMCSA requests a renewal and revision of the paperwork burden of 2126–0001. The Agency requests a reduction in the burden hours from 99.46 million hours to 41.03 million hours. The reduction is the result of amendments of the HOS rules in which the burden estimate for most drivers and motor carriers is based on compliance with the ELD final rule during the three-year ICR period. Two types of information are collected under this IC: (1) Drivers' RODS (electronic records or, in some cases, paper logbooks), and (2) supporting documents, such as fuel and toll receipts, that motor carriers use to verify accuracy of RODS and for other business purposes. The use of ELDs reduces the driver's time to input duty status from 6.5 minutes to 2 minutes. Because motor carriers use supporting documents that drivers are required to maintain for other business purposes, the Agency excludes this task because it is a usual and customary activity.

On March 8, 2019, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on this ICR. The agency received three comments in response to that notice. One commenter, Aaron Pettigrew, expressed concern that the ELDs and vendor fees for data management service vendors are burdensome to small companies. Mr. Pettigrew did not comment on the reasonableness of these estimated costs.

The Agency finds that the benefits and costs of complying with the ELD rule are outside the scope of a request for approval of this information collection request. The Agency's supporting statement includes an estimate of the cost of ELDs and data management fees used to estimate non-labor related costs of the ICR. The supporting statement included equipment costs and data management fees posted on vendors' websites.

Two commenters, Toni Smith and TruckerNation, stated that the 2-minute response time for collecting and filing records underestimates the burden hours and costs of complying with the HOS reporting and recordkeeping requirements. Mr. Smith stated that the 2-minute response time is not sufficient to account for the time to audit and file RODS and supporting documents.

TruckerNation submitted the results of a survey in which 62 percent of respondents indicated it takes more than 6.5 minutes to input daily duty status to complete electronic RODS. The Agency finds that TruckerNation did not provide a discussion of the survey methods, the margin of error, or a mean response time that is statistically significant and different from a 2-minute response time.

The Agency finds that the 2-minute response time in the supporting statement is applied to driver burden hours to monetize the cost of drivers' time on task to prepare daily RODS. It is not applicable to administrative time incurred by motor carrier staff to audit and file RODS. The Agency finds that these are usual and customary costs that motor carriers would incur in the absence of the HOS reporting and recordkeeping requirements. For example, motor carriers might collect and audit RODS and certain supporting documents for other business uses to estimate deductible expenses for income tax purposes.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the information collected. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority delegated in 49 CFR 1.87 on: June 11, 2019.

Kenneth Riddle,

Director, Office of Registration and Safety Information.

[FR Doc. 2019–13015 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0347]

Commercial Driver's License Standards: Application for Exemptions; Navistar, Inc. (Navistar)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Navistar, Inc. (Navistar) has requested an exemption from the Federal requirement to hold a U.S. commercial driver's license (CDL) for two commercial motor vehicle (CMV) drivers, Mr. Thomas Nickels, Senior Vice President, Engineering Optimization with MAN Truck & Bus SE in Munich, Germany (MAN), and Mr. Lukas Walter, Senior Vice President, Engineering Powertrain for MAN, both of whom hold a valid German commercial license. MAN is partnering with Navistar to develop technological advancements in fuel economy and emissions reductions. Mr. Nickels and Mr. Walter need to test drive Navistar vehicles on U.S. roads to better understand product requirements in ''real world'' environments and verify results. Navistar believes that the requirements for a German commercial license ensure that operations under the exemption would likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption. FMCSA requests public comments on Navistar's application for exemption.

DATES: Comments must be received on or before July 19, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2018–0347 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0347), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2018–0347'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the granting or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Navistar has applied for an exemption for Mr. Thomas Nickels and Mr. Lukas Walter from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Both drivers are unable to obtain a CDL due to their lack of residency in the United States. Copies of the exemption applications are included in the docket referenced at the beginning of this notice.

The exemption would allow these drivers to operate CMVs in interstate or intrastate commerce to help develop technology advancements in fuel economy and emissions reductions. Mr. Nickels and Mr. Walter need to drive

Navistar vehicles on public roads to better understand product requirements for these systems in ''real world'' environments in the U.S. market. According to Navistar, both drivers will drive typically for no more than 8 hours per day for 2 consecutive days with 50 percent of the test driving on two-lane State highways and 50 percent on Interstate highways. The driving will consist of no more than 600 miles during a two-day period, at 300 miles per day. In all cases, drivers will be accompanied by a U.S. CDL holder familiar with the routes to be traveled.

Mr. Nickels and Mr. Walter hold valid German commercial licenses and, as explained by Navistar in its exemption request, the requirements for that license ensure that, operating under the exemption, these drivers would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation.

Furthermore, according to Navistar, both drivers are familiar with the operation of CMVs worldwide. Navistar requests that the exemption cover the maximum allowable duration of 5 years.

IV. Method To Ensure an Equivalent or Greater Level of Safety

Navistar notes that the Agency has previously determined, through the review of multiple CDL exemptions applications for German-domiciled drivers, that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. The Agency recently granted one of Navistar's drivers a similar exemption [April 15, 2019 (84 FR 15283)]. Since 2015, the Agency has granted Daimler drivers similar exemptions: [March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410)]; July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); September 10, 2018 (83 FR 45742)]. The Agency has not received any information or reports indicating there have been safety performance problems with individuals holding German commercial licenses and operating CMVs on public roads in the United States.

Notwithstanding the previous decisions, the Agency requests public comments concerning Mr. Nickels and Mr. Walter and whether exemptions should be granted to enable them to operate CMVs in the United States.

Issued on: June 12, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–13011 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0010]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from ten individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before July 19, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2019–0010 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0010), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2019–0010, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2019–0010, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The ten individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

III. Qualifications of Applicants

Joseph A. Cardazone

Mr. Cardazone, 63, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2019, his ophthalmologist stated, ''Mr. Cardazone has sufficient vision to operate a commercial vehicle.'' Mr. Cardazone reported that he has driven straight trucks for 35 years, accumulating 1.4 million miles. He holds an operator's license from New Jersey. His driving record for the last three years shows no crashes and one conviction for a moving violation in a CMV; failure to observe traffic control device.

Daniel R. Cope, Sr.

Mr. Cope, 63, has a hyphema in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2018, his optometrist stated, ''In my opinion, Daniel is visually capable of driving a commercial vehicle with corrective lenses.'' Mr. Cope reported that he has driven straight trucks for 42 years, accumulating 8,400 miles, and tractor-trailer combinations for 42 years, accumulating 84,000 miles. He holds a Class A CDL from Iowa. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Timothy E. Coultas

Mr. Coultas, 51, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my professional opinion this applicant has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Coultas reported that he has driven tractor-trailer combinations for 29 years, accumulating 2.9 million miles. He holds a Class AM CDL from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Edwin Figueroa

Mr. Figueroa, 47, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an

examination in 2019, his ophthalmologist stated, ''His vision is currently stable. Based on his examination I feel that he is capable of driving commercial vehicles.'' Mr. Figueroa reported that he has driven straight trucks for 12 years, accumulating 600,000 miles. He holds an operator's license from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Robert F. LaMark

Mr. LaMark, 51, has an enucleated right eye due to a traumatic incident in 2015. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my opinion, Robery [sic] has sufficient vision to perform his driving tasks to operate a commercial vehicle.'' Mr. LaMark reported that he has driven straight trucks for 32 years, accumulating 320,000 miles, and tractor-trailer combinations for 21 years, accumulating 21,000 miles. He holds a Class BM CDL from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Con May

Mr. May, 50, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2019, his optometrist stated, ''In my opinion, he does have the visual skills needed to operate a commercial vehicle.'' Mr. May reported that he has driven straight trucks for four years, accumulating 240,000 miles. He holds a Class B CDL from Indiana. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Justin E. Schwada

Mr. Schwada, 40, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/100. Following an examination in 2018, his optometrist stated, ''In my medical assessment, Mr. Justin Schwada has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle.'' Mr. Schwada reported that he has driven straight trucks for 24 years, accumulating 180,000 miles, tractor-trailer combinations for 19 years, accumulating 190,000 miles. He holds a Class A CDL from Missouri. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey A. Sherman

Mr. Sherman, 64, has had macular ischemia in his right eye since 2013. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2018, his ophthalmologist stated, ''In my opinion, Mr. Sherman has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sherman reported that he has driven straight trucks for 22 years, accumulating 220,000 miles, and tractor-trailer combinations for 37 years, accumulating 888,000 miles. He holds a Class A CDL from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Chadwick L. St. John

Mr. St. John, 35, has a retinal detachment in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2018, his ophthalmologist stated, ''In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. St. John reported that he has driven straight trucks for ten years, accumulating 600,000 miles. He holds an operator's license from Alabama. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Clinton A. Vandervoort

Mr. Vandervoort, 63, has a subluxed lens in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2019, his ophthalmologist stated, ''In my opinion, the vision is sufficient to perform driving tasks for a commercial vehicle.'' Mr. Vandervoort reported that he has driven straight trucks for 39 years, accumulating 374,400 miles. He holds a Class AM CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

Issued on: June 7, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–13009 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0093]

Hours of Service of Drivers: Turfgrass Producers International; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA has received an application from Turfgrass Producers International (TPI) asking the agency to extend the hours-of-service (HOS) exemption for agricultural operations to drivers transporting turfgrass sod for its business operations. FMCSA requests public comment on TPI's application for exemption.

DATES: Comments must be received on or before July 19, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2019–0093 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET,

Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4325; Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0093), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2019–0093'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted and provide an opportunity for public comment on the request.

The Agency preforms a review of safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The Agency will publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Turfgrass Producers International (TPI) represents natural grass seed and sod farmers throughout the United States and abroad. TPI has promoted the benefits of natural grass for 51 years and has members in over 46 States and 25 nations who produce natural grass seed and sod to service customers and consumers in the green industry. The natural grass product that farming members produce is delivered to urban and suburban areas where it is used for landscape services, home construction, and recreational industries, among others.

TPI requests that all transporters of turfgrass sod be eligible for the HOS exception for agricultural commodities provided in 49 CFR 395.1(k)(1). TPI asserts that sod producing members are concerned that sod is not included in the definition of an agricultural commodity in 49 CFR 395.2. TPI believes that the failure to define sod as an agricultural commodity is inconsistent with other Federal and State regulations and creates an unnecessary economic burden for sod farmers when transporting their product to market.

According to TPI's application, turfgrass sod is a perishable agricultural commodity that is recognized by the U.S. Department of Agriculture and, like many other agricultural commodities, is planted and harvested annually. Sod is cultivated and managed with techniques and equipment similar to those used for other crops and is subject to the same impacts of weather, weed infestations, insect pests, and plant disease factors that impact other agricultural crops. Similarly, once harvested for sale it is also subject to perishing in transport. Specifically, sod often loses its color, moisture, and vigor due to transplant shock and can die if palleted too long. Sod's perishability depends on many of the same factors that impact the transportation of other agricultural commodities including temperature, desiccation, oxygen and light deprivation, increased respiration, carbon starvation, etc., all of which negatively impact the quality of turfgrass sod.

TPI asserts that the lack of an HOS exemption granted to other agricultural commodities by 49 CFR 395.1(k)(1) will impact sod haulers' business heavily. Their inability to deliver their perishable product to market in a timely manner will result in a decrease in the amount of product they can ship and an increase in the amount of product that either perishes in transport or is damaged in transport, resulting in customers who refuse delivery or are otherwise not satisfied with sod quality at delivery. If granted, TPI estimates that the exemption would cover between 2,400 drivers (400 farm baseline) and 10,428 drivers (1,738 farm maximum).

IV. Method To Ensure an Equivalent or Greater Level of Safety

TPI essentially argues that the exemption would achieve a level of safety equivalent to that of others transporting agricultural commodities within 150 air miles of the source of the agricultural commodity. TPI is requesting that the Agency exercise its statutory authority to extend to the transporters of turfgrass sod the same HOS relief provided by Congress to transporters of specified agricultural commodities. TPI states that it will work with natural grass sod haulers to ensure they understand existing safety regulations regarding the operation of commercial motor vehicles. TPI contends that nothing about weight, stacking configuration, etc., makes natural grass sod any less safe to haul than other agricultural commodities, as demonstrated by the proven track record that natural grass sod farmers have had for many years while hauling sod as an agricultural commodity.

A copy of TPI's application for exemption is available for review in the docket for this notice.

Issued on: June 12, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–13016 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0139]

Entry-Level Driver Training: United Parcel Service, Inc. (UPS); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application for exemption from United Parcel Service, Inc. (UPS) from two provisions in the entry-level driver training (ELDT) final rule published on December 8, 2016. These provisions are the following: (1) The requirement that a driver training instructor have two years' experience and have held a Commercial Driver's License (CDL) for two years as set forth in the definitions of behind-the-wheel (BTW) instructor and theory instructor; and (2) the requirement to register each training location for a unique Training Provider Registry (TPR) number. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before July 19, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2019–0139 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at 202–366–4325 or by email at *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0139), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2019–0139'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

An exemption application has been submitted by United Parcel Service, Inc. (UPS). The applicant seeks an exemption from the following two provisions in the entry-level driver training (ELDT) final rule: (1) The requirement in 49 CFR 380.713 that a driver training instructor have two years' experience and have held a commercial driver's license (CDL) for two years as set forth in the definitions of behind-the-wheel (BTW) instructor and theory instructor in 49 CFR 380.605(b); and (2) the requirement in 49 CFR 380.703(a)(7) to register each training location for a unique Training Provider Registry (TPR) number.

According to UPS, it has a driver training school (DTS) that trains its

employees to become driver instructors. UPS describes its DTS as a success, as the school has trained hundreds of driver instructors, many of whom did not have previous CDL experience. UPS DTS instructors have, on average, 20 years of UPS experience, hold a CDL of the same (or higher) class and with all endorsements necessary to operate a CMV for which training is provided, have completed the DTS program, have maintained their DTS certification through quarterly additional training, and are employed by UPS as supervisors or managers. The DTS conducts an 8-week program designed to train supervisors and managers in UPS' long-haul operations to deliver driver training to drivers at their ''home'' worksites. The curriculum covers all the topics set forth in Part 380 Appendix A for the new ELDT rule. The UPS instructor trainees are assessed in progress reviews at days 5, 10, and 15, and a current DTS instructor monitors the quality of the training and trainee progress. According to UPS, the DTS program produces highly qualified driver instructors. Additionally, all UPS driver instructors are required to be recertified every 90 days to demonstrate the same skill level shown for their original DTS certification. UPS further performs internal quality assessments to validate that instructor skillsets are maintained throughout the organization.

UPS requests that it be exempted from the ELDT driver instructor qualification requirements. According to UPS, under the new ELDT regulations no one could be an instructor at the time these regulations go into effect unless he/she had obtained a CDL and had begun driving by February 7, 2018. UPS states that if it must comply with the instructor qualification requirements in the ELDT rule, it would not be able to use 25% of its current certified driver instructors, at minimum. Looking ahead two more years, that number would likely increase to 50% due to its changing workforce. UPS sees an increase in growth through volume demand, as well as an aging workforce that will lead to retiring CDL drivers and certified driver instructors. Without an exemption from the [ELDT] trainer requirements, UPS's inability to use its current driver instructors will impede substantially its ability to meet the demand for new drivers. UPS adds that the exemption is needed to meet Union contractual requirements, as under its collective bargaining agreement with the International Brotherhood of Teamsters (Teamsters), six current UPS employees must be provided with a promotion opportunity for every new hire.

The second part of UPS's application for exemption requests an exemption from the requirement in 49 CFR 380.703(a)(7), to register each training location for a unique Training Provider Registry (TPR) number. According to UPS, training for new drivers takes place in many locations. In each location, instructors who have been trained in the same way pursuant to UPS' DTS program will use a common FMCSR-compliant curriculum developed at a corporate level. UPS's Director of Driver Training is responsible for UPS's firm-wide training program. UPS is operating a single training program in multiple locations. UPS states that it needs this exemption due to the significant administrative burden that would result if it had to register every UPS location at which a new driver could be trained. In addition, having separate TPR numbers for multiple locations offering essentially the same training could create internal confusion for UPS, drivers, and the Agency. UPS new driver training may occur at as many as 1,800 separate locations a year. UPS estimates that the cost to register all of these locations would be substantial, and that it would incur additional costs to keep track of the various registrations, file updates, and new driver registrations.

IV. Method To Ensure an Equivalent or Greater Level of Safety

UPS offers its ''train the trainer'' program within its DTS to assure an equivalent level of safety. According to UPS, its DTS produces highly skilled instructors who know how to drive tractor-trailers and how to teach others to operate tractor-trailers in a safe manner. UPS believes that graduates of its DTS training program are better prepared to impart knowledge and skills on new drivers than someone who has had two years of driving experience. According to UPS, experience over time has shown that their instructors produce expertly trained, safe entry-level drivers. All DTS certified driver instructors are re-certified every 90 days and UPS conducts periodic (minimum annual) internal quality assessments of the DTS program. In regards to the registration requirements, UPS assures that the registration requirements will be fulfilled by a single registration for UPS' driver training program managed by UPS, if the exemption granted. UPS' requested exemption is for 5 years from the ELDT provisions 49 CFR 380.713 and 49 CFR 380.703(a)(7).

A copy of UPS's application for exemption is available for review in the docket for this notice.

Issued on: June 12, 2019.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2019–13014 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Notice of Funding Opportunity for America's Marine Highway Projects; Corrections

AGENCY: Maritime Administration, DOT.

ACTION: Correcting amendments.

SUMMARY: On June 14, 2019, the Maritime Administration announced the availability of funding for the Short Sea Transportation Program, commonly referred to as the America's Marine Highway Program (AMHP). The document inadvertently provided a deadline of June 14, 2019 for applications to be received. This document corrects the previous notice by stating that the deadline for applications to be received by MARAD is instead 5 p.m. EDT on August 15, 2019.

DATES: Applicable June 19, 2019.

FOR FURTHER INFORMATION CONTACT: Fred Jones, Office of Ports & Waterways Planning, Room W21–311, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, phone 202–366–1123, or email *Fred.Jones@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: In FR Doc. 2019–12580 appearing on page 27838 in the **Federal Register** on Friday, June 14, 2019, the following corrections are made:

1. On page 27838, under ''**DATES:** Applications must be received by the Maritime Administration by 5 p.m. EDT on June 14, 2019.'' is corrected to read ''**DATES:** Applications must be received by the Maritime Administration by 5 p.m. EDT on August 15, 2019.''

2. On page 27842, the first sentence beginning under ''*Submission Dates and Times* Applications must be received by 5 p.m. EDT on June 14, 2019. Late applications that are the result of failure to register or comply with *Grants.gov* application requirements in a timely

manner will not be considered.'' is corrected to read ''*Submission Dates and Times* Applications must be received by 5 p.m. EDT on August 15, 2019. Late applications that are the result of failure to register or comply with *Grants.gov* application requirements in a timely manner will not be considered.''

* * * * *

Dated: June 14, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–12971 Filed 6–18–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled ''Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks'' (Guidance). The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before July 19, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557–246, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0246'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0246, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0246'' or ''Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the collection.

Description: The OCC, Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and the National Credit Union Administration issued final guidance entitled ''Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risk'' on August 17, 2010.[2] The guidance focuses on the need to provide adequate information to consumers about reverse mortgage products, to provide qualified independent counseling to consumers considering these products, and to avoid potential conflicts of interest. The guidance also addresses related policies, procedures, internal controls, and third party risk management.

The information collection requirements contained in the guidance address the implementation of policies and procedures, training, and program maintenance. The guidance provides that institutions offering reverse mortgages should have written policies and procedures that prohibit the practice of directing a consumer to a particular counseling agency or contacting a counselor on the consumer's behalf.

Title of Information Collection: Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.

OMB Control No.: 1557–0246.

Affected Public: National banks, federal savings associations, subsidiaries of national banks and federal savings associations, and federal branches or agencies of foreign banks.

[1] On February 5, 2019, the OCC published a 60-day notice for this information collection, 84 FR 1822.

[2] 75 FR 50801.

Type of Review: Regular.

Estimated number of respondents: 15.

Total estimated annual burden: 160 hours.

Frequency of Response: On occasion.

On February 5, 2019, the OCC issued a notice for 60 days of comment concerning the collection, 84 FR 1822. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

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

(d) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 13, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–13007 Filed 6–18–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Interagency Guidance on Asset Securitization Activities

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled ''Interagency Guidance on Asset Securitization Activities.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before July 19, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0217, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0217'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0217, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0217'' or ''Interagency Guidance on Asset Securitization Activities.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. OCC is requesting that OMB extend its approval of this information collection.

Title: Interagency Guidance on Asset Securitization Activities.

OMB Control No.: 1557–0217.

Description: In 1999, the OCC issued the Interagency Guidance on Asset Securitization Activities [2] (guidance) in response to a determination that some institutions involved in asset securitization activities had significant weaknesses in their asset securitization practices. The information collection contained in the guidance applies to financial institutions engaged in asset securitization activities and provides that any institution engaged in these activities should maintain a written asset securitization policy, document the fair value of retained interests, and maintain a management information system to monitor asset securitization activities. Financial institution

[1] On February 5, 2019, the OCC published a 60-day notice for this information collection, 84 FR 1824.

[2] OCC Bulletin 1999–46, December 13, 1999, *https://www.occ.gov/news-issuances/bulletins/1999/bulletin-1999-46a.pdf.*

management uses the information collected to ensure the safe and sound operation of the institution's asset securitization activities. The OCC uses the information to evaluate the quality of an institution's risk management practices.

Affected Public: Businesses or other for-profit.

Type of Review: Regular.

Estimated Number of Respondents: 35.

Estimated Annual Burden: 1,828 hours. (Previously, 1,827. Increased to 1,828 due to rounding in calculation.)

Frequency of Response: On occasion.

On February 5, 2019, the OCC issued a notice for 60 days of comment regarding this collection, 84 FR 1824. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

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

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 13, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–13006 Filed 6–18–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0849]

Agency Information Collection Activity: Alternate Signer Certification

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed 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 August 19, 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. 2900–0849'' 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: Public Law 104–13; 44 U.S.C. 3501–21.

Title: Alternate Signer Certification.

OMB Control Number: 2900–0849.

Type of Review: Extension of a currently approved collection.

Abstract: The VA Form 21–0972 is used to collect the alternate signer information necessary for VA to accept benefit application forms signed by the individuals on behalf of veterans and claimants. The information collected will be used to contact the alternate signer for verification purposes.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,000.

By direction of the Secretary.

Danny S. Green,

VA Interim Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–12946 Filed 6–18–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0270]

Agency Information Collection Activity: Financial Counseling Statement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administrations, 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 reinstatement of a 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 August 19, 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. 2900–0270'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny 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: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Financial Counseling Statement.

OMB Control Number: 2900–0270.

Type of Review: Reinstatement without change of a collection.

Abstract: This form was developed under 38 U.S.C. 3732. VA Form 26–8844 provides for recording comprehensive financial information concerning the borrower's net income, total expenditures, net worth, suggested areas for which expenses can be reduced or income increased, the arrangement of a family budget and recommendations for the terms of any repayment agreement on the defaulted loan.

Affected Public: Individuals and households.

Estimated Annual Burden: 3,750 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,000.

By direction of the Secretary.

Danny S. Green,

VA Interim Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–12947 Filed 6–18–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Endangered Species Act Listing Determination for Alewife and Blueback Herring; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 170718681–9471–01]

RIN 0648–XF575

Endangered and Threatened Wildlife and Plants; Endangered Species Act Listing Determination for Alewife and Blueback Herring

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

ACTION: Notice; 12-month finding and availability of status review document.

SUMMARY: We, NMFS, have completed a comprehensive status review under the Endangered Species Act (ESA) for alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*). The status review identified four alewife distinct population segments (DPSs): Canada, Northern New England, Southern New England, and Mid-Atlantic. Based on the best scientific and commercial data available including the Status Review Report, we have determined that listing the alewife rangewide or as any of the identified DPSs as threatened or endangered under the ESA is not warranted at this time. The status review also identified three blueback herring DPSs: Canada/Northern New England, Mid-Atlantic, and Southern Atlantic. Based on the best scientific and commercial data available, we have determined that listing blueback herring rangewide or as any of the identified DPSs as threatened or endangered under the ESA is not warranted at this time.

DATES: This finding was made on June 19, 2019.

ADDRESSES: The status review document for alewife and blueback herring is available electronically at: *www.nmfs.noaa.gov/pr/species/notwarranted.htm.* You may also obtain a copy by submitting a request to the Protected Resources Division, NMFS GARFO, 55 Great Republic Drive, Gloucester, MA 01930, Attention: Alewife and Blueback Herring 12-month Finding.

FOR FURTHER INFORMATION CONTACT: Jean Higgins, NMFS Greater Atlantic Regional Fisheries Office, 978–281–9345.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2013, we determined that listing alewife and blueback herring (collectively, ''river herring''): As threatened or endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) was not warranted (78 FR 48943). However, we also noted that there were significant data deficiencies. In that determination, we committed to revisiting the status of both species in three to five years, a period after which ongoing scientific studies, including a river herring stock assessment update by the Atlantic States Marine Fisheries Commission (ASMFC), would be completed.

The Natural Resources Defense Council and Earthjustice (the Plaintiffs) filed suit against NMFS on February 10, 2015, in the U.S. District Court in Washington, DC, challenging our decision not to list blueback herring as threatened or endangered. The Plaintiffs also challenged our determination that the Mid-Atlantic stock complex of blueback herring is not a DPS. On March 25, 2017, the court vacated the blueback herring listing determination and remanded the listing determination to us *(Natural Resources Defense Council, Inc., et al.* v. *Samuel D. Rauch, National Marine Fisheries Services, 1:15–cv–00198 (D.D.C.)).* As part of a negotiated agreement with the Plaintiffs, we committed to publishing a revised listing determination for blueback herring by January 31, 2019; the publication date was extended by the court to June 19, 2019.

We announced the initiation of an alewife and blueback herring status review in the **Federal Register** on August 15, 2017 (82 FR 38672). At that time, we also opened a 60-day solicitation period for new scientific and commercial data on alewife and blueback herring to help ensure that we were informed by the best available scientific and commercial information.

Listing Species Under the ESA

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a ''species'' under section 3 of the ESA (16 U.S.C. 1532), and then consider whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines species to include any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a DPS of a taxonomic species (DPS Policy; 61 FR 4722). Under the DPS Policy, we consider the following when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

Section 3 of the ESA further defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range and a threatened species as one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Thus, we interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future. In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

Section 4(a)(1) of the ESA also requires us to determine whether any species is endangered or threatened as a result of any of the following five factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence (16 U.S.C. 1533(a)(1)(A)–(E)). Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made by any state or foreign nation or political subdivision thereof to protect the species. In evaluating the efficacy of formalized domestic conservation efforts that have yet to be implemented or demonstrate effectiveness, we rely on the Services' joint *Policy on Evaluation of Conservation Efforts When Making Listing Decisions* (PECE; 68 FR 15100; March 28, 2003).

Status Review

As noted above, we had committed to revisiting the listing determination for alewife and blueback herring in the 2013 listing determination; accordingly,

although the Plaintiffs only challenged our findings related to blueback herring, we did a comprehensive status review of alewife and blueback herring. As part of the status review, we formed a status review team (SRT) composed of scientists from NMFS' Northeast Fisheries Science Center (NEFSC), USFWS, NMFS' Greater Atlantic Regional Fisheries Office, Delaware Division of Fish and Wildlife, Massachusetts Division of Marine Fisheries, New York Department of Environmental Conservation, and South Carolina Department of Natural Resources. SRT members had scientific expertise in river herring biology/ecology and/or expertise in population ecology or fisheries management. We tasked the SRT with multiple assessments for both species including the requests from the 2011 petition that NMFS list blueback herring rangewide or alternatively, as DPSs, and to provide a thorough status review for both species. First, the SRT was asked to compile and review the best available information and to assess the overall risk of extinction facing alewife and blueback herring rangewide now and in the foreseeable future. Second, the SRT was tasked with identifying any DPSs within these populations and asked to assess the risk of extinction facing each identified DPS of alewife and blueback herring now and in the foreseeable future. Third, the SRT was asked to consider whether, within the species rangewide or within any identified DPSs, a significant portion of the range may exist, and if so, whether the portion is at risk of extinction now or in the foreseeable future.

In order to complete the status review, the SRT considered a variety of scientific information from the literature, unpublished documents, and direct communications with researchers working on alewife and blueback herring, as well as technical information submitted to NMFS. Information that was not previously peer-reviewed was formally reviewed by the SRT. The SRT evaluated all factors highlighted by the petitioners as well as additional factors that may contribute to alewife and blueback herring vulnerability.

The Status Review Report for alewife and blueback herring (NMFS 2019), summarized in sections below, compiles the best available information on the status of the species as required by the ESA, provides an evaluation of the discreteness and significance of these populations in terms of the DPS Policy, and assesses the extinction risk of the species and any DPS, focusing primarily on threats related to the five statutory factors set forth above. The status review report is available electronically at the website listed in **ADDRESSES**.

The status review report underwent independent peer review as required by the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M–05–03; December 16, 2004). The status review report was peer reviewed by three independent specialists selected from government, academic, and scientific communities, with expertise in biology, conservation and management, and specific knowledge of river herring and similar species. The peer reviewers were asked to evaluate the adequacy, quality, and completeness of the data considered and whether uncertainties in these data were identified and characterized in the status review report, as well as to evaluate the findings made in the ''Assessment of Extinction Risk'' section of the report. Peer Reviewers were also asked to identify any information missing or lacking justification, or whether information was applied incorrectly in reaching conclusions. The SRT addressed peer reviewer comments prior to finalizing the status review report. Comments received are posted online at *www.cio.noaa.gov/services_programs/prplans/IDXXX.html.*

We subsequently reviewed the status review report, the cited references, and the peer review comments, and believe the status review report, upon which this 12-month finding is based, provides the best available scientific and commercial information on alewife and blueback herring. Much of the information discussed below on alewife and blueback herring biology, genetic diversity, distribution, abundance, threats, and extinction risk is attributable to the status review report. However, in making the 12-month finding determination, we have independently applied the statutory provisions of the ESA, including evaluation of the factors set forth in section 4(a)(1)(A)–(E) and our regulations regarding listing determinations (50 CFR part 424).

Description, Life History, and Ecology of the Petitioned Species

Distribution and Habitat Use

Collectively, blueback herring and alewives are known as river herring. River herring are found along the Atlantic coast of North America, from the southern Gulf of St. Lawrence, Canada to the southeastern United States (Mullen *et al.* 1986, Schultz *et al.* 2009). The coastal ranges of the two species overlap. Blueback herring range from Nova Scotia south to the St. Johns River, Florida, and alewives range from Labrador and Newfoundland south to North Carolina, though their occurrence in the extreme southern range is less common (Collette and Klein-MacPhee 2002, ASMFC 2009a). In Canada, river herring (often referred to as gaspereau) have been monitored at varying frequencies in the St. Croix, St. John, Gaspereau, Tusket, Margaree and Miramichi River (J. Gibson, pers. comm) and are reportedly most abundant in the Miramichi, Margaree, LaHave, Tusket, Shubenacadie and Saint John Rivers (DFO 2001). River herring are proportionally less abundant in smaller coastal rivers and streams (DFO 2001). Generally, blueback herring in Canada occur in fewer rivers than alewives and are less abundant in rivers where both species coexist (DFO 2001).

River herring are anadromous, meaning that they mature in the marine environment and then migrate up coastal rivers to estuaries and into freshwater rivers, ponds, and lake habitats to spawn (Collette and Klein-MacPhee 2002, ASMFC 2009a). In general, adult river herring are found at depths less than 328 feet (ft) (100 meters (m)) in waters along the continental shelf (Neves 1981, ASMFC 2009a, Schultz *et al.* 2009).

River herring are highly migratory, pelagic, schooling species with seasonal spawning migrations cued by water temperature (Collette and Klein-MacPhee 2002, Schultz *et al.* 2009). The spawning migration for alewives typically occurs when water temperatures range from 50–64 °F (10–18 °C) and for blueback herring when temperatures range from 57–77 °F (14–25 °C; Klauda *et al.* 1991). Due to this temperature-dependent spawning, river herring may return to rivers to spawn as early as December or January in the southern portions and as late as July and August in the northern portions of their ranges (ASMFC 2009a; DFO 2001).

Blueback herring and alewives consume a variety of zooplankton. Blueback herring subsist chiefly on ctenophores, calanoid copepods, amphipods, mysids and other pelagic shrimps, and small fishes while at sea (Bigelow and Schroeder 1953, Brooks and Dodson 1965, Neves 1981, Stone 1986, Stone and Daborn 1987, Scott and Scott 1988, Bowman *et al.* 2000). Alewives consume euphausiids, calanoid copepods, mysids, hyrperiid amphipods, chaetognaths, pteropods, decapod larvae, and salps (Edwards and Bowman, 1979, Neves 1981, Vinogradov 1984, Stone and Daborn 1987, Bowman *et al.* 2000).

Little is known about their habitat preference in the marine environment; however, marine distributions of fish

are often linked to environmental variables, such as prey availability and predation, along with seascape features. Studies have shown that alewife and blueback herring distribution is linked to bottom temperature, salinity, and depth (Neves 1981, Bethoney *et al.* 2014, Lynch *et al.* 2015). Recent papers described marine co-occurrences of alewife and blueback herring with Atlantic herring and mackerel (Turner *et al.* 2016, Turner *et al.* 2017), providing further evidence, in addition to observed ''bycatch'' estimates (Bethoney *et al.* 2014), that river herring school with Atlantic herring and mackerel. Turner *et al.* (2016) modeled associations of alewife and blueback herring, finding that alewife and blueback herring distributions overlapped with Atlantic herring (68–72 percent correct predictions) and Atlantic mackerel (57–69 percent correct predictions).

Cieri (2012) analyzed NMFS bottom trawl survey data to identify seasonal population clusters of river herring along the East Coast of the United States (N Carolina to Maine; covering the continental shelf and the U.S. Exclusive Economic Zone (EEZ)). The spring trawl survey (1968–2008 NMFS Spring Bottom Trawl Survey) indicates that river herring are widespread across the survey area (sampling locations vary by year; the spring trawl occurs from North Carolina to Nova Scotia; sampling occurs at depths ~18 m to ~300 m (~60 ft to 984 ft)). Highest occurrences during the spring were off Maine's Downeast coast (roughly from Penobscot Bay north-eastwards to the Canadian border) and areas offshore, near Cape Ann and Cape Cod in Massachusetts, and a large area between Block Island, Rhode Island, and Long Island Sound. During the summer (1948–1995 NMFS Bottom Trawl Survey), river herring occurred less frequently across the survey area, with most river herring along the New England coast north of Rhode Island, and the highest occurrences off Downeast, Maine and south of Cape Cod, Massachusetts. During the fall survey (1963–2008 NMFS bottom trawl surveys), the occurrence of river herring shifted northward, with highest occurrences north of Cape Cod, along the Maine Coast to the Bay of Fundy, and another cluster off the eastern shore of Nova Scotia.

Seasonal migrations have been observed in the marine environment as described above but are not well understood (NMFS 2012a). Hypothesized overwintering areas and migration pathways were presented at the NMFS 2012 Stock Structure workshop, but little tagging data existed at that time to confirm any one theory. The working group from the 2012 workshop was not able to determine the migration patterns and mixing patterns of alewife and blueback herring in the ocean, though they strongly suspected regional stock mixing (NMFS 2012a). Therefore, the conclusion that came out of the 2012 Stock Structure workshop was that, based on available data, the ocean phase of alewife and blueback herring was of mixed stocks.

Sparse tagging data is available to help elucidate these marine migrations of alewife and blueback herring. In 1985–1986, approximately 19,000 river herring were tagged and released in the upper Bay of Fundy, Nova Scotia (Rulifson *et al.* 1987). With an overall recapture rate of 0.39, Rulifson *et al.* (1987) received returns of alewife tags from freshwater locations in Nova Scotia, and marine locations in Nova Scotia and Massachusetts; whereas, blueback herring tags were returned from freshwater locations in Maryland and North Carolina, and marine locations in Nova Scotia. The authors suspected from this recapture data that alewives and blueback herring tagged in the Bay of Fundy were of different origins, hypothesizing that alewives were likely regional fish from as far away as New England, while the blueback herring recaptures were likely not regional fish, but those of U.S. origin from the mid-Atlantic region. However, the low tag return numbers from outside of Nova Scotia (n=2) made it difficult to generalize about the natal rivers of blueback herring caught in the Bay of Fundy. More recent work with acoustic tags (n=13 alewives and n=12 blueback herring) in the Hudson River by Eakin (2017) demonstrated in-river residence times ranged from two to three weeks, with fish exiting the system three to six days post-spawn. Marine migration was also detected from four blueback herring (2 male, 2 female) showing coastal movements over a six-month period (June to November) from the Hudson River to Penobscot Bay off the coast of Maine. The study also demonstrates the potential of using acoustic tagging to tease out marine movements of alewife and blueback herring in future studies.

Landlocked Populations

Landlocked populations of alewives and blueback herring also exist. Landlocked alewife populations occur in many freshwater lakes and ponds from Canada to North Carolina as well as the Great Lakes (Rothschild 1966, Boaze and Lackey 1974). Many landlocked alewife populations occur as a result of stocking to provide a forage base for game fish species (Palkovacs *et al.* 2007).

Recent efforts to assess the evolutionary origins of landlocked alewives indicate that they rapidly diverged from their anadromous cousins between 300 and 5,000 years ago and now represent a discrete life history variant of the species, *Alosa pseudoharengus* (Palkovacs *et al.* 2007). Given their relatively recent divergence from anadromous populations, one plausible explanation for the existence of landlocked populations may be the construction of dams by either Native Americans or early colonial settlers that precluded the downstream migration of juvenile herring (Palkovacs *et al.* 2007). Since their divergence, landlocked alewives evolved to possess significantly different mouthparts than their anadromous cousins, including narrower gapes and smaller gill raker spacings to take advantage of year round availability of smaller prey in freshwater lakes and ponds (Palkovacs *et al.* 2007). Furthermore, the landlocked alewife, compared to its anadromous cousin, matures earlier, has a smaller adult body size, and reduced fecundity (Palkovacs *et al.* 2007). At this time, there is no substantive information that would suggest that landlocked populations can or would revert back to an anadromous life history if they had the opportunity to do so.

The discrete life history and morphological differences between the two life history variants (anadromous and landlocked) provide substantial evidence that upon evolving to landlocked, landlocked populations become largely independent and separate from anadromous populations and occupy largely separate ecological niches (Palkovacs and Post 2008). There is the possibility that landlocked alewife and blueback herring may have the opportunity to mix with anadromous river herring during high discharge years and through dam removals that could provide passage over dams and access to historic spawning habitats restored for anadromous populations, where it did not previously exist.

A Memorandum of Understanding (MOU) between the Services regarding jurisdictional responsibilities and listing procedures under the ESA was signed August 28, 1974. This MOU states that NMFS shall have jurisdiction over species ''which either (1) reside the major portion of their lifetimes in marine waters; or (2) are species which spend part of their lifetimes in estuarine waters, if the major portion of the remaining time (the time which is not spent in estuarine waters) is spent in marine waters.''

Given that landlocked populations of river herring remain in freshwater throughout their life history and are genetically divergent from the anadromous species, pursuant to the aforementioned MOU, NMFS did not include the landlocked populations of alewife and blueback herring in the review of the status of the species in 2013 (78 FR 48943) and did not include landlocked populations in this status review.

Reproduction and Growth

Overall, alewife and blueback herring are habitat generalists found over a wide variety of substrates, depths, and temperatures in freshwater lakes and ponds, river, estuaries, and the Atlantic Ocean. The substrate preferred for spawning varies greatly and can include gravel, detritus, and submerged aquatic vegetation. Alewives prefer spawning over sand or gravel bottoms (Galligan 1962), usually in quiet waters of ponds and coves (Marcy 1967, Loesch and Lund 1977). Blueback herring prefer spawning over hard substrates, where the flow is relatively swift (Loesch and Lund 1977). Nursery areas include freshwater and semi-brackish waters to fully saline waters for both species (Gahagan 2012, Turner *et al.* 2014, Payne Wynne *et al.* 2015).

Alewife and blueback herring are fast growing, quick to mature species with a high fecundity rate. Estimates of fecundity for alewife range from 45,800 to 400,000 eggs (Foster and Goodbred 1978, Klauda *et al.* 1991, Loesch and Lund 1977). Estimates of fecundity for blueback herring range from 30,000 to 400,000 eggs (Loesch 1981, Jessop 1993). Fecundity estimates range widely based on the length and weight of the females (Schmidt and Limburg 1989) and geographic recruitment (Gainias *et al.* 2015). Both species spawn three to four times throughout the spawning season (McBride *et al.* 2010, Gainias *et al.* 2015). Recent literature has shown that some Alosa species, including alewife, are indeterminate spawners (Hyle *et al.* 2014, Gainas *et al.* 2015, McBride *et al.* 2016). For indeterminate spawners, the potential annual fecundity is not fixed before the onset of spawning. In these species, eggs can develop at any time during the spawning season. This is likely the case for blueback herring but more research is needed.

Incubation time depends on temperature (*i.e.,* low water temperatures results in slow development) and is estimated to take two to four days after deposit for blueback herring (Klauda *et al.* 1991, Jones *et al.* 1978). Incubation time for alewives takes between two to six days depending on temperature (Mansueti 1956, Jones *et al.* 1978).

Population Structure

The population structure of these species has been examined using various tools, including otolith chemistry and genetics (see Population Structure section of the Status Review Report for additional information, NMFS 2019). While otolith chemistry studies focused largely on assigning fish to rivers of natal origin with some success (Gahagan *et al.* 2012, Turner *et al.* 2015), genetic analyses found evidence for regional structure within each species (McBride *et al.* 2014, Palkovacs *et al.* 2014, Hasselman *et al.* 2014; Hasselman *et al.* 2016; Ogburn *et al.* 2017, Baetscher *et al.* 2017, Reid *et al.* 2018). Early genetic studies relied largely on microsatellite markers and were limited in geographic scope (see Genetic Studies section of NMFS 2019 for a detailed account); however, recent studies using single nucleotide polymorphisms (SNP) have expanded the evaluation of population structure for these species across most of their ranges.

SNPs are small genetic variations that occur in a genome. These variations are used as molecular markers in genetic research and help to overcome limitations associated with microsatellite analyses when applied to fisheries management, which includes a lack of portability across laboratories and instruments (Reid *et al.* 2018).

SNPs were developed using 96 individual loci for alewife and for blueback herring by Baetscher *et al.* (2017). This study evaluated river herring samples across portions of the U.S. range for self-assignment to populations of origin and to three alewife and four blueback herring regional groupings identified by Palkovacs *et al.* (2014). While self-assignments to population of origin were lower (at around 67 percent), assignment to regional groupings was 93 percent for alewives and 96 percent for blueback herring. Structure cluster analysis showed similar results to previous regional stock structure groupings, with the addition of two additional blueback herring populations (Peticodiac and Margaree).

Recent work by Reid *et al.* (2018) built on Baetscher *et al.'s* work by increasing the geographic range and number of rivers sampled for each species, sampling across almost the entire range of these species. This study included river herring from 108 locations (genotyping over 8,000 fish) ranging from Florida to Newfoundland using SNP markers developed by Baetcher *et al.* (2017). A STRUCTURE analysis of the genetic data supported four distinct geographic groupings for alewife and five for blueback herring (STRUCTURE refers to software that is one of the most widely used population analysis tools for assessing patterns of genetic structure in samples). The study identified the following four regional groupings for alewife: (1) Canada, including: Garnish River and Otter Pond, Newfoundland to Saint John River, New Brunswick; (2) Northern New England, including: St. Croix River, ME to Merrimack River, NH; (3) Southern New England, including: Parker River, MA to Carll's River, NY; and (4) Mid Atlantic, including: Hudson River, NY to Alligator River, NC. The study also identified the following five regional groupings for blueback herring: (1) Canada/Northern New England, including: Margaree River, Nova Scotia to Kennebec River, ME; (2) Mid New England, including: Oyster River, NH to Parker River, MA; (3) Southern New England, including: Mystic River, MA to Gilbert-Stuart Pond, RI; (4) Mid Atlantic, including: Connecticut River, CT to Neuse River, NC; and (5) Southern Atlantic, including: Cape Fear River, NC to St. Johns River, FL.

Because the similarity in geographic naming of these stock complexes may make them difficult to distinguish between species, hereafter, we preface alewife regional groupings with Aw- and blueback herring regional groupings with Bb-. For example, the Mid Atlantic regional groupings of these two species would be referred to as Aw-Mid Atlantic and Bb-Mid Atlantic. We refer the reader to Figures 1 and 2 below for maps distinguishing the boundaries between stock complexes.

Self-assignment tests to these regional groups ranged from 86–92 percent for alewives and 76–95 percent for blueback herring (Reid *et al.* 2018). However, self-assignment to individual rivers was low. These results indicate that at larger spatial scales, there are regions of restricted gene flow within the range-wide populations; Reid *et al.* (2018) noted that this could be driven by environmental and habitat differences. However, the results also indicate that the extent of gene flow across regional groupings was higher than previously reported by Palkovacs *et al.* (2014), especially at the borders, and that proximate rivers are usually not demographically independent due to straying behaviors. Reid *et al.* (2018) noted transitional populations present between regions, with rivers such as the Hudson and the Connecticut Rivers

acting as transition zones for alewife and blueback herring, respectively.

Genetic studies also demonstrate that stocking practices influence genetic differentiation among populations (McBride *et al.* 2014, McBride *et al.* 2015). McBride *et al.* (2015) used 12 microsatellite loci to evaluate the genetic structure of 16 alewife populations in Maine to determine whether past stocking influenced current populations and the genetic composition of alewives. Results showed a highly significant relationship between genetic differentiation and geographic distance among non-stocked populations, but a non-significant relationship among stocked populations (McBride *et al.* 2015).

The unusual genetic groupings of river herring in Maine are likely a result of Maine's complex stocking history. Alewife populations in Maine have been subject to considerable within-basin and out-of-basin stocking for the purpose of enhancement, recolonization of extirpated populations, and stock introduction. Alewife stocking in Maine dates back at least to 1803 when alewives were reportedly moved from the Pemaquid and St. George Rivers to create a run of alewives in the Damariscotta River (Atkins and Goode 1887). These efforts were largely responsive to considerable declines in alewife populations following the construction of dams, over exploitation, and pollution. Although there has been considerable alewife stocking and relocation throughout Maine, there are very few records documenting these efforts. In contrast, considerably less stocking of alewives has occurred in Maritime Canada. This information further demonstrates that past stocking patterns influence contemporary genetic diversity, and stocking history should be taken into account when interpreting genetic groupings (Atkins and Goode 1887, McBride *et al.* 2014, McBride *et al.* 2015).

In summary, the best available genetic data suggest that alewife and blueback herring may be distinguished by regional groupings. Recent studies show a minimum of four stock complexes of alewife and five stock complexes of blueback herring. Transfer of river herring within-basin and out-of-basin has likely altered the genetic diversity of alewife and blueback herring observed today in several ways. First, stocked areas are most likely to have had already low populations (or local extirpation), and second, this reduced population is then stocked with a likely different genetic stock, further masking the previous population's genetics.

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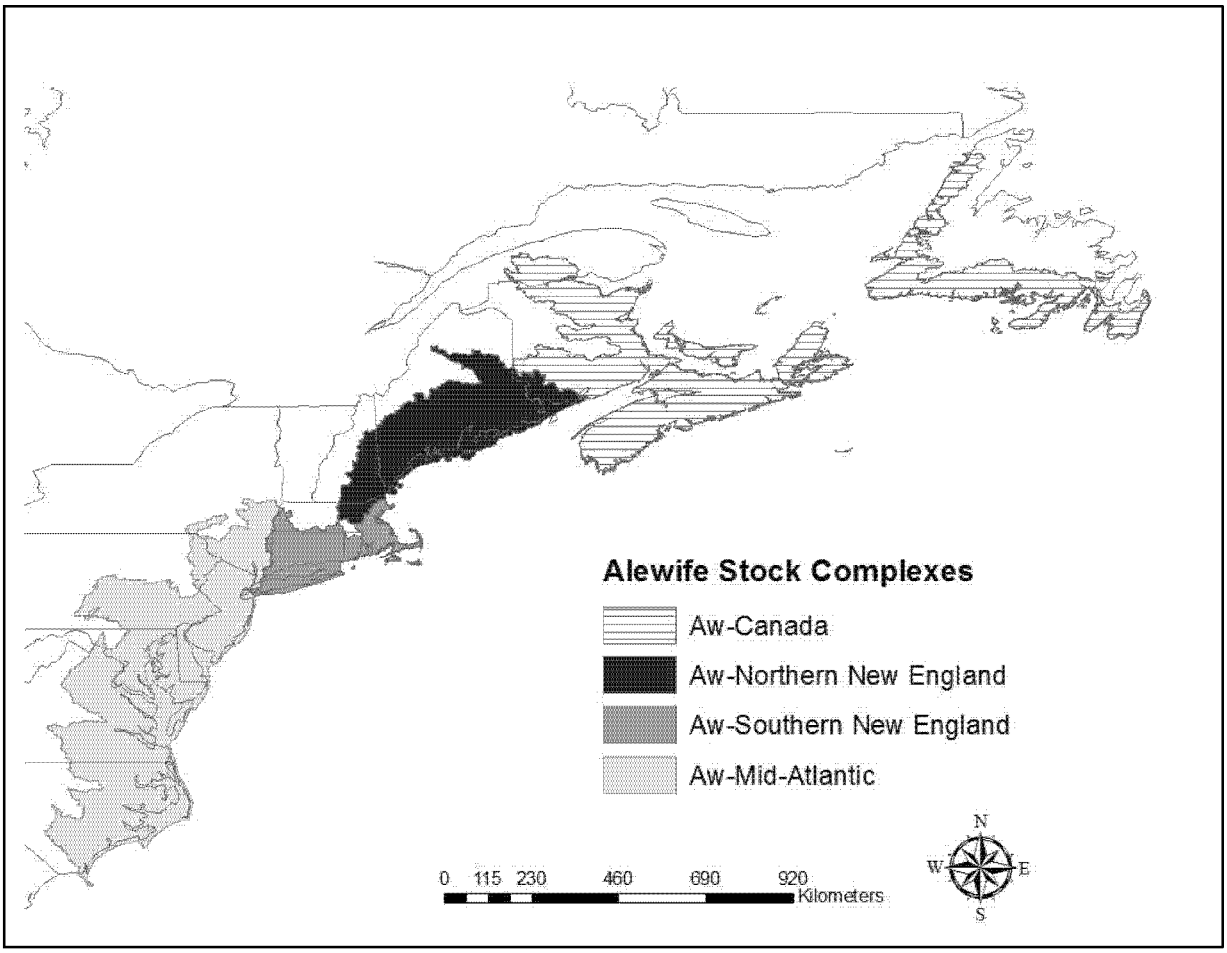

Figure 1. Map of Alewife regional stock complexes: Aw-Canada; Aw-Northern New England; Aw-Southern New England; and Aw-Mid-Atlantic.

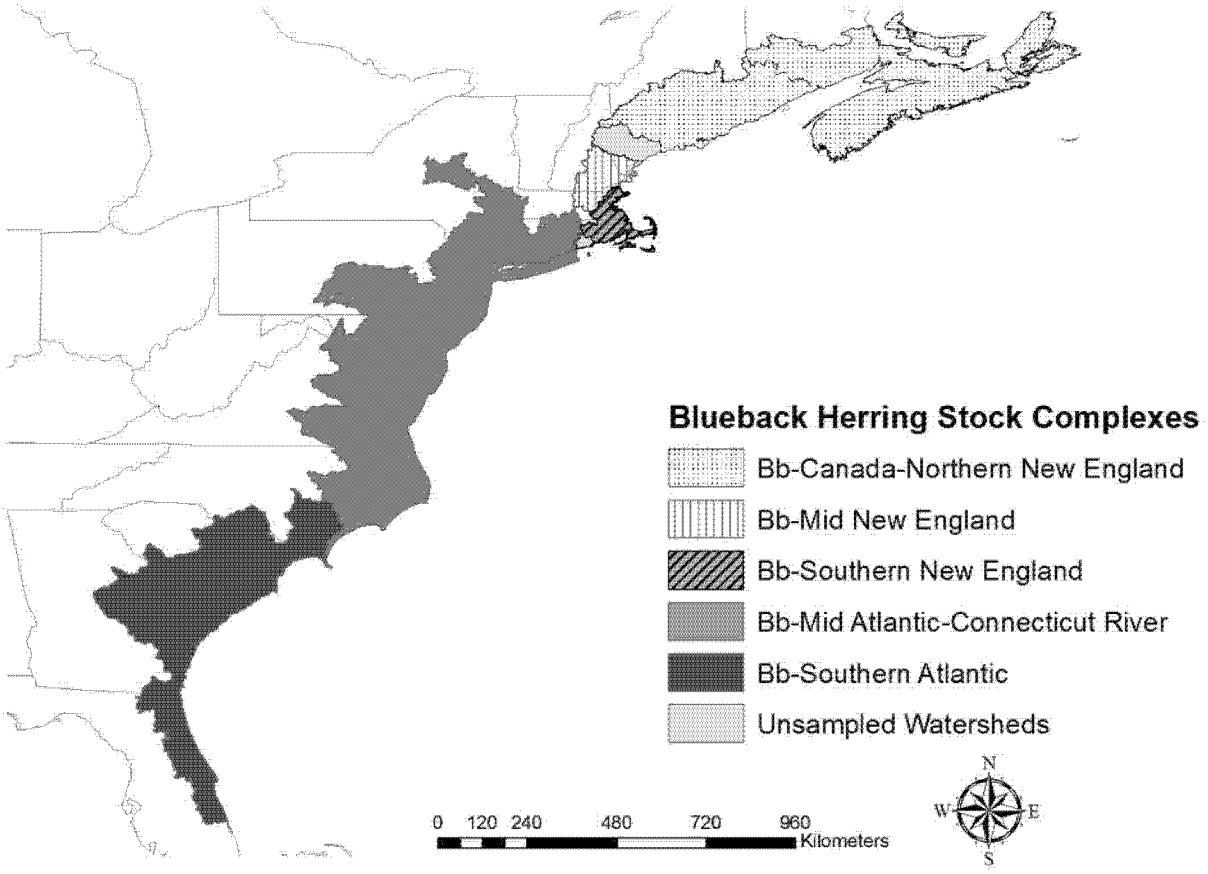

Figure 2. Map of Blueback herring regional stock complexes: Bb-Canada/Northern New England, Bb-Mid-New England, Bb-Southern New England, Bb-Mid-Atlantic; and, Bb-Southern Atlantic.

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Straying

River herring conform to a metapopulation paradigm (*i.e.,* a group of spatially separated populations of the same species that interact at some level) with adults frequently returning to their natal rivers for spawning with straying occurring between rivers (Jones 2006; ASMFC 2009a). There have been very few studies to quantify straying rates, despite evidence of straying in the literature (Jessop 1994, Palkovacs *et al.* 2014, McBride *et al.* 2014, Turner and Limburg 2014, McBride *et al.* 2015, Ogburn *et al.* 2017). Jessop (1994) reported straying rates of 3–37 percent in the St. John River, New Brunswick. McBride *et al.* (2014) and Palkovacs *et al.* (2014) reported greater isolation by distance for alewives than for blueback herring, suggesting higher overall straying rates for blueback herring. Additionally, isolation by distance evidence from Palkovacs *et al.* (2014) and McBride *et al.* (2015), suggest that genetic exchange (straying) is more likely to happen with nearest-neighbor rivers over such distances as 100–200 kilometers (km) (62–124 miles (mi)). Straying has also been reported in other anadromous fishes, such as American shad (Jolly *et al.* 2012) and striped bass (Gauthier *et al.* 2013). Pess *et al.* (2014) reviewed basic life history traits of diadromous fish and hypothesized recolonization rates. Alewife and blueback herring were considered to have a moderate to strong tendency to colonize new streams (Pess *et al.* 2014). Both species were considered to have the highest tendencies to colonize new streams of all the east coast diadromous fish, with blueback herring scoring slightly higher than alewife. Alewife and blueback herring were also considered to have strong tendencies to expand into habitat within existing streams; scoring higher than all other diadromous fish, except for sea lamprey.

Abundance and Trends

United States Waters

A 2017 alewife and blueback herring stock assessment update was prepared and compiled by the River Herring Stock Assessment Subcommittee, hereafter referred to as the 'subcommittee,' of the ASMFC Shad and River Herring Technical Committee. Data and reports used for this assessment were obtained from Federal and state resource agencies, power generating companies, and universities.

The 2017 stock assessment followed the same methods and analyses outlined in the 2012 benchmark report (ASMFC 2012a) and updated the existing time series by adding data when available for the years 2011–2015. The subcommittee assessed the coastal stocks of alewife and blueback herring by individual rivers as well as coast-wide based on available data. As this assessment provides the most up-to-date abundance and trends data of river herring, the Status Review Report includes many excerpts from the 2017 ASMFC stock

assessment (see sections on Commercial Catch Per Unit Effort (CPUE), Run Counts, Young-Of-The-Year Seine Surveys, Juvenile-Adult Fisheries-Independent Seine, Gillnet and Electrofishing Surveys, Juvenile and Adult Trawl Surveys, Mean Length, Maximum Age, Mean Length-at-Age, Repeat Spawner Frequency, Total Mortality (Z) Estimates, and Exploitation Rates) (NMFS 2019). For the full ASMFC stock assessment (including additional tables and figures), see River Herring Stock Assessment Update Volume I (*www.asmfc.org/uploads/file/59b1b81bRiverHerringStockAssessmentUpdate_Aug2017.pdf*). Of the 54 in-river stocks of river herring for which data were available, the 2017 ASMFC Stock Assessment indicates that from 2006 through 2015, 16 experienced increasing trends, two experienced decreasing trends, eight were identified as stable by the ASMFC working group, 10 experienced no discernible trend/high variability, and 18 did not have enough data to assess recent trends, including one that had no returning fish (see Table 2 in NMFS 2019; ASMFC 2017a). The coastwide meta-complex of river herring stocks on the U.S. Atlantic coast remains depleted to near historic lows. A depleted status indicates that there was evidence for declines in abundance due to a number of factors, but the relative importance of these factors in reducing river herring stocks could not be determined.

Commercial landings of river herring peaked in the late 1960s, declined rapidly through the 1970s and 1980s, and have remained at levels less than 3 percent of the peak over the past decade. Fisheries-independent surveys did not show consistent trends and were quite variable both within and among surveys. Those surveys that showed declines tended to be from areas south of Long Island. A problem with the majority of fisheries-independent surveys is that the length of their time series did not overlap with the period of peak commercial landings (*i.e.,* prior to 1970); therefore, there is no accurate way of comparing historical landings to fisheries-independent surveys. There appears to be a consensus among various assessment methodologies that exploitation has decreased. The decline in exploitation over the past decade is not surprising because river herring populations are at low levels and more restrictive regulations or moratoria have been enacted by states (See *Directed Commercial Harvest* below and State Regulations in the Status Review Report, NMFS 2019, for further detail).

Canadian Waters

The Department of Fisheries and Oceans (DFO) monitors and manages river herring runs in Canada. River herring monitoring in the Maritime region falls into two categories, rivers where abundances can be directly estimated (*e.g.,* monitoring at fishways), and rivers where information is available from the commercial fishery (Gibson *et al.* 2017). River herring runs in the Miramichi River in New Brunswick and the Margaree River in Cape Breton, Nova Scotia were monitored intensively from 1983 to 2000 (DFO 2001). More recently (1997 to 2017), the Gaspereau River alewife run and harvest has been intensively monitored and managed partially in response to a 2002 fisheries management plan that had a goal of increasing spawning escapement to 400,000 adults (DFO 2007). During the period of 1970 to 2017, Billard (2017) estimated run size of alewife in the Gaspereau from 265,000 to 1.2 million. The exploitation rate for this same period ranged from 33 percent to 89 percent. Billard (2017) classified the most recent years 2015 and 2016 as having healthy escapement rates, but overexploited as a fishery. Elsewhere, river herring runs have been monitored less intensively, though harvest rates are monitored throughout Atlantic Canada through license sales, reporting requirements, and a logbook system that was enacted in 1992 (DFO 2001). At the time DFO conducted their last stock assessment in 2001, they identified river herring harvest levels as being low (relative to historical levels) and stable to low and decreasing across most rivers where data were available (DFO 2001).

With respect to the commercial harvest of river herring, reported landings of river herring peaked in 1980 at slightly less than 25.5 million lbs (11,600 metric tons (mt) and declined to less than 11 million lbs (5,000 mt) in 1996. Landings data reported through DFO indicate that river herring harvests have continued to decline through 2010.

Species Finding

Based on the best available scientific and commercial data summarized above, we find that the alewife and blueback herring are currently considered as two taxonomically-distinct species (see Taxonomy and Distinctive Characteristics of NMFS 2019) and, therefore, meet the definition of ''species'' pursuant to section 3 of the ESA. Below, we evaluate whether each species warrants listing as endangered or threatened under the ESA throughout all or a significant portion of its range.

Distinct Population Segment Determination

In addition to evaluating whether each species is at risk of extinction, the SRT was asked to identify any DPSs of these species and evaluate whether such DPSs may be at risk of extinction throughout all or a significant portion of its range. As described above, the ESA's definition of ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The DPS Policy requires the consideration of two elements: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs, and (2) the significance of the population segment to the species to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions. The first condition is if the species is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation. The second condition is if the species is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. If a population segment is found to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. Factors that can be considered in evaluating significance may include, but are not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Evaluation of Discreteness

The SRT evaluated whether any alewife or blueback herring DPSs, including those identified by the petitioner in 2011, exist. The Status Review Report, in particular the section

on Population Structure, provides a summary of information they reviewed, including tagging and genetics data, as well as fisheries management information (NMFS 2019). As highlighted in the DPS Policy, quantitative measures of morphological discontinuity or differentiation can serve as evidence of marked separation of populations. After review of the best available information, the SRT found that genetic studies provide evidence of regional differentiation in both alewife and blueback herring by demonstrating discrete groupings at a large geographic scale. In particular, the SRT found that the study by Reid *et al.* (2018), which includes a large number of rivers across the species' ranges, provides the most comprehensive evidence of regional differentiation for these species, because STRUCTURE analyses demonstrate support for regional groupings, and because the self-assignment tests to regional groupings have high values ranging from 86–92 percent for alewife and 76–95 percent for blueback herring. The SRT found the following regional stock complexes for alewife represent discrete groupings: (1) Aw-Canada (Garnish River, Newfoundland to Saint John River, New Brunswick); (2) Aw-Northern New England (St. Croix River, ME to Merrimack River, NH); (3) Aw-Southern New England (Parker River, MA to Carlls River, NY) and; (4) Aw-Mid Atlantic (Hudson River, NY to Alligator River, NC). These four discrete groupings correspond to the stock complexes in Figure 1. In addition the SRT found the following regional stock complexes for blueback represent discrete groupings: (1) Bb-Canada/Northern New England (Margaree River, Nova Scotia to Kennebec River, ME); (2) Bb-Mid New England (Oyster River, NH to Parker River, MA); (3) Bb-Southern New England (Mystic River, MA to Gilbert-Stuart Pond, RI); (4) Bb-Mid Atlantic (Connecticut River, CT to Neuse River, NC), and; (5) Bb-Southern Atlantic (Cape Fear River, NC to St. Johns River, FL). These five discrete groupings correspond to the stock complexes shown in Figure 2.

While the SRT found that genetic information provides evidence for regional population separation and discreteness for these stock complexes (depicted in Figures 1 and 2), especially at a large spatial scale, the SRT noted some uncertainty associated with the level of discreteness of these groupings. Specifically, the high degree of admixture (mixture of two or more genetically differentiated populations) at the boundaries of each of these stock complexes, referred to earlier as transitions zones, makes separation between stocks unclear at finer spatial scales. Also spatial gaps exist where samples were not obtained or tested (*e.g.,* between the Aw-Southern New England and Aw-Mid Atlantic stock complexes, and between the Bb-Southern New England and Bb-Atlantic stock complexes) making the accuracy of these boundaries uncertain.

Additionally, the SRT noted that there is some uncertainty surrounding these groupings due to the methodology used by Reid *et al.* (2018) in the rangewide analysis where STRUCTURE was run on collection sites without binning into larger spawning habitats. For example, Black Creek, a tributary of the Hudson, was considered separate from the Hudson in the analysis even though these rivers share an estuary. Additionally, a number of small tributaries of the Connecticut River (*e.g.,* Wethersfield Cove, Mill Creek, and Mill Brook) were considered as separate independent populations.

Overall, the SRT relied upon the best available genetic information (see NMFS 2019 for complete discussion) to determine discreteness for the alewife and blueback herring. The SRT discussed but did not find evidence of physiological, ecological, behavioral factors or life history differences that would aid in further delineating discrete populations. In addition, the SRT discussed combining and/or further separating the genetic groupings outlined above, but did not find evidence to support modifying the genetic groups, despite the study limitations discussed (see above).

Evaluation of Significance

As noted above, the DPS Policy instructs that significance is evaluated in terms of the ecological and biological importance of the population segment to the species. The SRT considered the significance of each of the regional groupings (*i.e.,* stock complexes) found to be discrete. In reviewing the factors that support a finding of significance outlined above, the SRT found that the discrete groupings identified for both species are not found in areas that appear to have unique or unusual ecological settings. Although the petitioner suggested that the terrestrial ecoregions identified by The Nature Conservancy (Anderson 2003) may represent unique or unusual ecological settings for the species, the SRT found several ecoregions were not unique or unusual because they could be found within the range of more than one discrete group. For example, the Northern Appalachian/Acadian terrestrial ecoregion extends throughout both the Aw-Northern New England and Aw-Canada stock complexes. Additionally, the Northern Piedmont and North Atlantic Coastal ecoregions extended through the Bb-Mid-New England, Bb-Southern New England and into the Bb-Mid-Atlantic stock complexes. For ecoregions that existed entirely within one stock complex, the SRT found that the ecoregions appeared to have no unique or unusual bearing on the discrete grouping's biology, as the range of the group included more than one ecoregion. For example, the Chesapeake Bay Lowlands exist entirely within the range of the Aw-Mid-Atlantic stock complex; however, this range also contains a portion of the North Atlantic coast ecoregion (which spans three stock complexes). The SRT also considered whether other ecological factors, such as ocean currents or thermal regimes, existed within the boundaries of these complexes, and might point to persistence in a unique ecological setting. However, the SRT did not find that any of these stock complexes persist in a unique terrestrial ecoregions or other ''ecological settings,'' instead they noted that some of these stock complexes may share marine environments where oceanic features appear unique, and that terrestrial ecoregions do not align with the identified discrete stock complex boundaries.

Next, the SRT considered whether the loss of the population segments would result in significant gaps in the range of the taxa. The SRT agreed that the length of coastline or overall size of the habitat that the discrete grouping inhabited would be the greatest factor in determining whether a gap, or loss in the range, was significant to a taxon as a whole. Specifically, large gaps in the range across widespread watersheds might be difficult for either species to refill naturally (*i.e.,* through straying) and would be extremely difficult to fill through management efforts (*e.g.,* stocking).

Large gaps in the range may interfere with connectivity between populations, resulting in isolated populations that are more vulnerable to the impacts of large threats or catastrophic events (*e.g.,* storms, regional drought). Connectivity, population resilience and diversity are important when determining what constitutes a significant portion of the species' range (Waples *et al.* 2007). Maintaining connectivity between genetic groups supports proper metapopulation function, in this case, anadromy. Ensuring that river herring populations are well represented across diverse habitats helps to maintain and enhance genetic variability and

population resilience (McElhany *et al.* 2000). Additionally, ensuring wide geographic distribution across diverse climate and geographic regions helps to minimize risk from catastrophes (*e.g.,* droughts, floods, hurricanes, etc.; McElhany *et al.* 2000). Furthermore, preventing isolation of genetic groups protects against population divergence (Allendorf and Luikart, 2007). Further, a large gap on the periphery of the range would limit the distribution of the species, similarly reducing resiliency. For example, wide distributions may provide a diversity of habitats and buffer species against widespread threats such as changing temperatures by providing more opportunities for habitat refugia. Although there is no evidence currently available to suggest that genetic differences between these stock complexes represent adaptive traits (only neutral genetic markers have been used in the current population structure analyses), the SRT also noted that significant gaps could represent a loss of genetic adaptation if these regional groupings are also linked to adaptive traits (NMFS 2019).

As noted in the Status Review Report river herring discrete stock complexes could re-colonize spatial gaps in the range. Genetic studies provide evidence of straying (see Straying above) and suggest transition zones between populations (NMFS 2019). The SRT noted that gaps in the population would most likely be filled in a step-wise fashion with fish moving in from the borders of the nearest stock complexes, but that some straying may occur mid-range as well. Because river herring exhibit straying both from nearby rivers and over larger distances (Gardner *et al.* 2011, Hogg 2012, sensu Reid *et al.* 2018), the SRT noted that the significance of any particular gap will be primarily a factor of the geographic scope (or size of the gap).

The SRT noted that the life history, fecundity, and straying behavior of these species could lead to having river herring within individual rivers once occupied by the ''lost'' stock (*i.e.,* fish recolonizing the gap in the range) rather quickly, but perhaps at low or less than sustainable levels. For the purposes of considering the loss of each discrete stock complex, the SRT defined a significant gap to be a large geographic area of the range (considering the length of coastline or size of the watershed) that was unlikely to be recolonized with self-sustaining populations within at least 10 generations (40–60 years); the upper limit of time the SRT believed that the taxon could sustain without detrimental effects from loss of connectivity.

There is debate in the literature regarding the application of assigning a general number to represent when populations are sufficiently large enough to maintain genetic variation (Allendorf and Luikart 2007). The SRT settled on a self-sustaining population of around 1,000 spawning fish annually in currently occupied rivers within the area; a number close to the population of some smaller river systems where populations are able to maintain returns (*e.g.,* Little River, MA). This metric of 1,000 fish is close to, but greater than the ''500 rule'' introduced by Franklin (1980) for indicating when a population may be at risk of losing genetic variability.

The SRT reviewed each of the discrete stock complexes for both species and considered the overall size of the gap that would exist as well as the likelihood that the area would be filled in by neighboring stock complexes. The SRT noted that the nearest neighboring stock complex would be most likely to colonize in a step-wise fashion at the borders of any gap. The SRT also acknowledged that strays may colonize from any stock complex, as isolation by distance evidence from Palkovacs *et al.* (2014) and McBride *et al.* (2015) suggests that genetic exchange (straying) currently happens over such distances as 100–200 km (62–124 mi). However, while this is possible, this scenario was less likely than strays colonizing from the closest stock complex.

The loss of discrete stock complexes that were large in geographic scope and, therefore, unlikely to be filled in by neighboring stock complexes were considered likely to leave a significant gap in the species' range. These findings are summarized below in Table 1.

TABLE 1—SUMMARY OF SIGNIFICANT GAP DISCUSSION FOR ALEWIFE AND BLUEBACK HERRING STOCK COMPLEXES

Discrete stock complex	Estimates of geographic scope of the stock complex (watershed size (square kilometers (km^2) (square miles mi^2)); coastline distance (km) (mi); degrees latitude; percent of rangewide watershed area)	Likelihood of recolonization	Loss of the stock complex would result in a significant gap (yes or no)
Alewife Canada	169,000 km^2 (65,251 mi^2); 15,200 km (9,444 mi); 7.5 degrees latitude; 35 percent.	Recolonization is unlikely due to the large size of the gap and with only one neighboring complex to the south.	Yes.
Alewife Northern New England	74,000 km^2 (28,572 mi^2); 5,800 km (3,604 mi); 2.5 degrees latitude,15 percent.	Recolonization across this range is unlikely due to the large size of the gap despite having neighboring complexes to the south and north beginning to recolonize bordering areas.	Yes.
Alewife Southern New England	35,500 km^2 (13,707 mi^2); 7400 km (4,598 mi); 2.5 degrees latitude; 7 percent.	Recolonization is unlikely due to the large size of the gap and with only one neighboring complex to the north.	Yes.
Alewife Mid-Atlantic	211,500 km^2 (81,661 mi^2); 19,600 km (12,179 mi); 9 degrees latitude; 43 percent.	Recolonization is unlikely due to the large size of the gap and with only one neighboring complex to the north.	Yes.
Blueback Herring Canada/Northern New England.	137,000 km^2 (52,896 mi^2); 11,100 km (6,897 mi); 4 degrees of latitude; 26 percent.	Recolonization is unlikely due to the large size of the gap and with only one neighboring complex to the south.	Yes.
Blueback Herring Mid New England	12,000 km^2 (4,633 mi^2); 311 km (193 mi); 0.5 degrees of latitude; <3 percent.	Recolonization across this range is likely given the small size of the gap and because neighboring complexes can recolonize step-wise from the south and north.	No.
Blueback Herring Southern New England.	9,000 km^2 (3,475 mi^2); 2,900 km (1,802 mi); 1.5 degrees of latitude; <2 percent.	Recolonization across this range is likely given the small size of the gap and because neighboring complexes can recolonize step-wise from the south and north. Additionally, proximity to known river herring overwintering grounds might support further recolonization.	No.
Blueback Herring Mid Atlantic	211,000 km^2 (81,468 mi^2); 24,800 km (15,410 mi); 9 degrees of latitude; 40 percent.	Recolonization across this range is unlikely due to the large size of the gap despite neighboring complexes to the south and north beginning to recolonize bordering areas.	Yes.

TABLE 1—SUMMARY OF SIGNIFICANT GAP DISCUSSION FOR ALEWIFE AND BLUEBACK HERRING STOCK COMPLEXES—Continued

Discrete stock complex	Estimates of geographic scope of the stock complex (watershed size (square kilometers (km^2) (square miles mi^2)); coastline distance (km) (mi); degrees latitude; percent of rangewide watershed area)	Likelihood of recolonization	Loss of the stock complex would result in a significant gap (yes or no)
Blueback Herring Southern Atlantic	140,000 km^2 (54,054 mi^2); 18,300 km (11,371 mi); 7 degrees of latitude, 26 percent.	Recolonization is unlikely due to the large size of the gap and with only one neighboring complex to the north.	Yes.

The SRT did not find evidence that discrete population segments outlined previously represent the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range. The SRT identified four alewife DPSs and three blueback herring DPSs. Therefore, none of the DPSs represent the only surviving natural occurrence of either alewife or blueback herring.

Finally, the SRT considered evidence to determine whether any of the discrete population segments differ markedly from other populations of the species (*i.e.,* the other identified stock complexes) in its genetic characteristics. The SRT discussed the methodology in the Reid *et al.* (2018) paper and inquired with one of the lead authors about information on the genetic diversity (*e.g.* heterozygosity among stock complexes) results from the study. The SNP markers in the Reid *et al.* (2018) paper used neutral genetic markers which do not convey adaptive traits, so the SRT was unable to find evidence that the discrete stock complexes differ markedly from other populations of the species in its genetic characteristics. The SRT also considered spawning timing, which has been shown to be heritable in steelhead and presumably could be heritable in other anadromous fish, including alewife or blueback herring. The SRT examined rangewide spawning strategies, and was not aware of differing life history strategies, such as winter and fall spawning timing in the species (as exhibited in steelhead). Alewives and blueback herring use thermal cues for spawning timing; however, this appears to be due to clinal patterns, with rivers in the southern portion of the range beginning spawning earliest in the year and the rivers at highest latitudes spawning latest in the year. Overall, the SRT did not find existing evidence to support heritable spawning timing in alewife or blueback herring.

After reviewing the significance criteria, the SRT did not find evidence to demonstrate these discrete stock complexes persist in a unique ecological setting or that they differ markedly from one another in their genetic characteristics. The SRT did find evidence that loss of the population segment would result in a significant gap in the range of the taxon for all four discrete stock complexes of alewife: Aw-Canada; Aw-Northern New England; Aw-Southern New England, and; Aw-Mid-Atlantic. In addition, the SRT also found evidence that loss of the population segment would result in a significant gap in the range of the taxon for three of the five discrete stock complexes of blueback herring: Bb-Canada/Northern New England, Bb-Mid-Atlantic, and bb-Southern Atlantic. However, due to the small size of the Bb-Mid-New England and Bb-Southern New England stock complexes and because this habitat is likely to be recolonized by blueback herring stock complexes to the north and to the south, the loss of one of these two discrete stock complexes did not represent a significant gap in the range of the taxon (which includes five discrete stock complexes across the range).

While the SRT applied the ''10 generations for recolonization'' formula (described above), we do not find that the use of such a formula is necessary given the large geographic scope (see Table 1 column 2) of the potential gaps caused by the loss of the Aw-Canada; Aw-Northern New England; Aw-Southern New England, or; Aw-Mid-Atlantic stock complex or the Bb-Canada/Northern New England, Bb-Mid-Atlantic, or Bb-Southern Atlantic stock complex. The potential loss of any of these stock complexes would create a large gap in the range of these species creating issues with connectivity between populations, lowering the diversity of habitats that these species span, and reducing the species' ability to overcome large threats or catastrophic events. In contrast, a small gap in the range, such as either the potential loss of the Bb-Mid New England or Bb-Southern New England stock complex, may be less important to these species because their straying behavior and fecundity may allow them to regain or even maintain connectivity between neighboring stock complexes. Accordingly, based on these considerations, we agree with the SRT's findings that the loss of the Aw Canada; Aw-Northern New England; Aw-Southern New England, or; Aw-Mid-Atlantic stock complex or the Bb-Canada/Northern New England, Bb-Mid-Atlantic, or Bb-Southern Atlantic stock complex would create a significant gap in the range of these species.

The SRT relied on the best available information throughout this analysis, but noted that future information on behavior, ecology, and genetic characteristics may reveal differences significant enough to show fish to be uniquely adapted to each stock complex.

Because the following stock complexes meet both the discreteness and significance prongs, the SRT identified, and we agree with, the following DPSs for alewife (Figure 3):

- Aw-Canada DPS the range includes Garnish River, Newfoundland to Saint John River, New Brunswick;
- Aw-Northern New England DPS—the range includes St. Croix River, ME to Merrimack River, NH;
- Aw-Southern New England DPS—the range includes Parker River, MA to Carll's River, NY; and
- Aw-Mid Atlantic DPS—the range includes Hudson River, NY to Alligator River, NC.

Because the three blueback herring stock complexes meet both the discreteness and significance prongs, the SRT recommends, and we agree, with the following DPSs for blueback herring (Figure 4):

- Bb-Canada-Northern New England DPS—the range includes Margaree River, Nova Scotia to Kennebec River, ME;
- Bb-Mid Atlantic DPS—the range includes Connecticut River, CT to Neuse River, NC; and
- Bb-Southern Atlantic DPS—the range includes Cape Fear River, NC.

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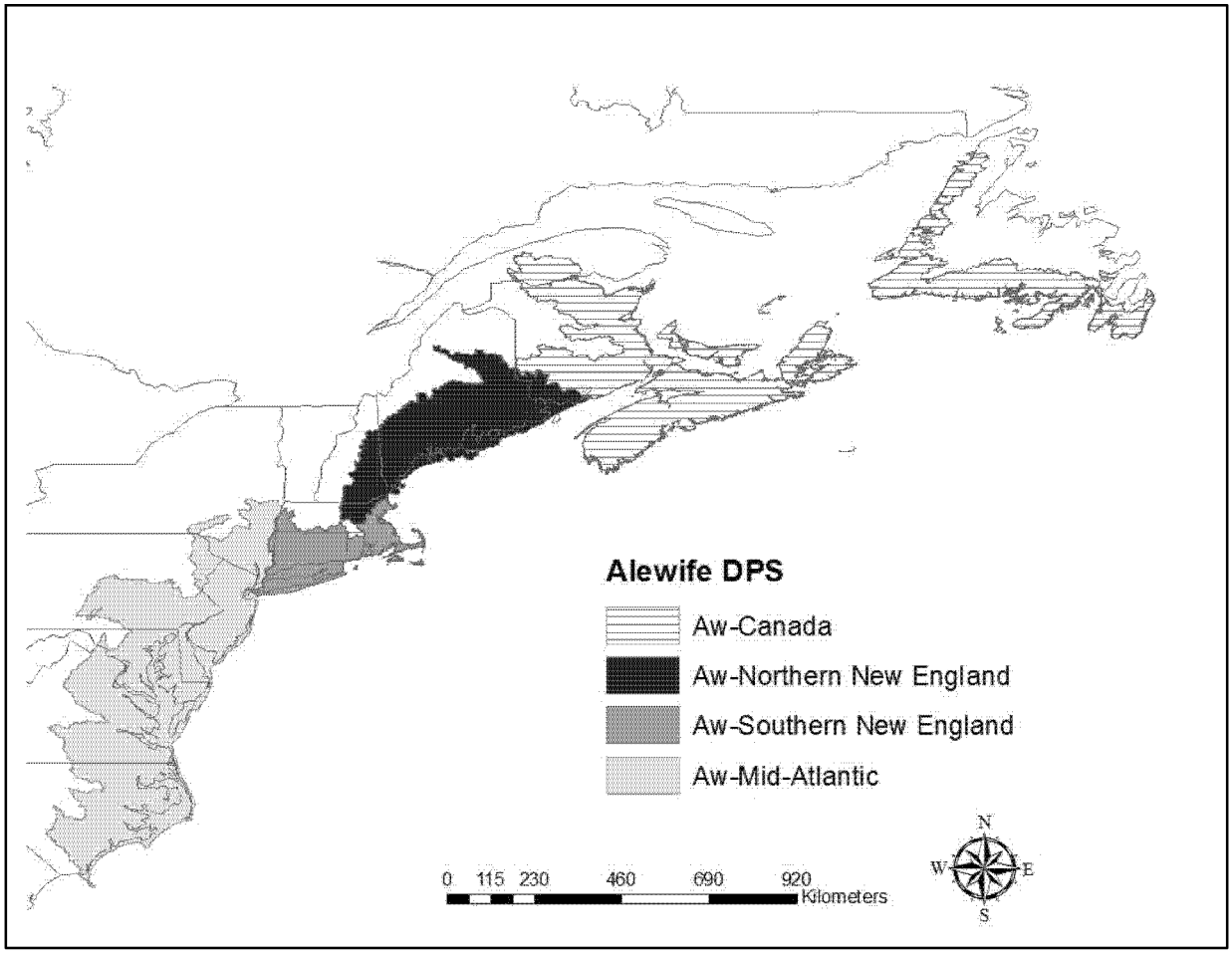

Figure 3. Map of Alewife Distinct Populations Segments (DPS): Aw-Canada DPS, Aw-Northern New England DPS, Aw-Southern New England DPS, and Aw-Mid-Atlantic DPS.

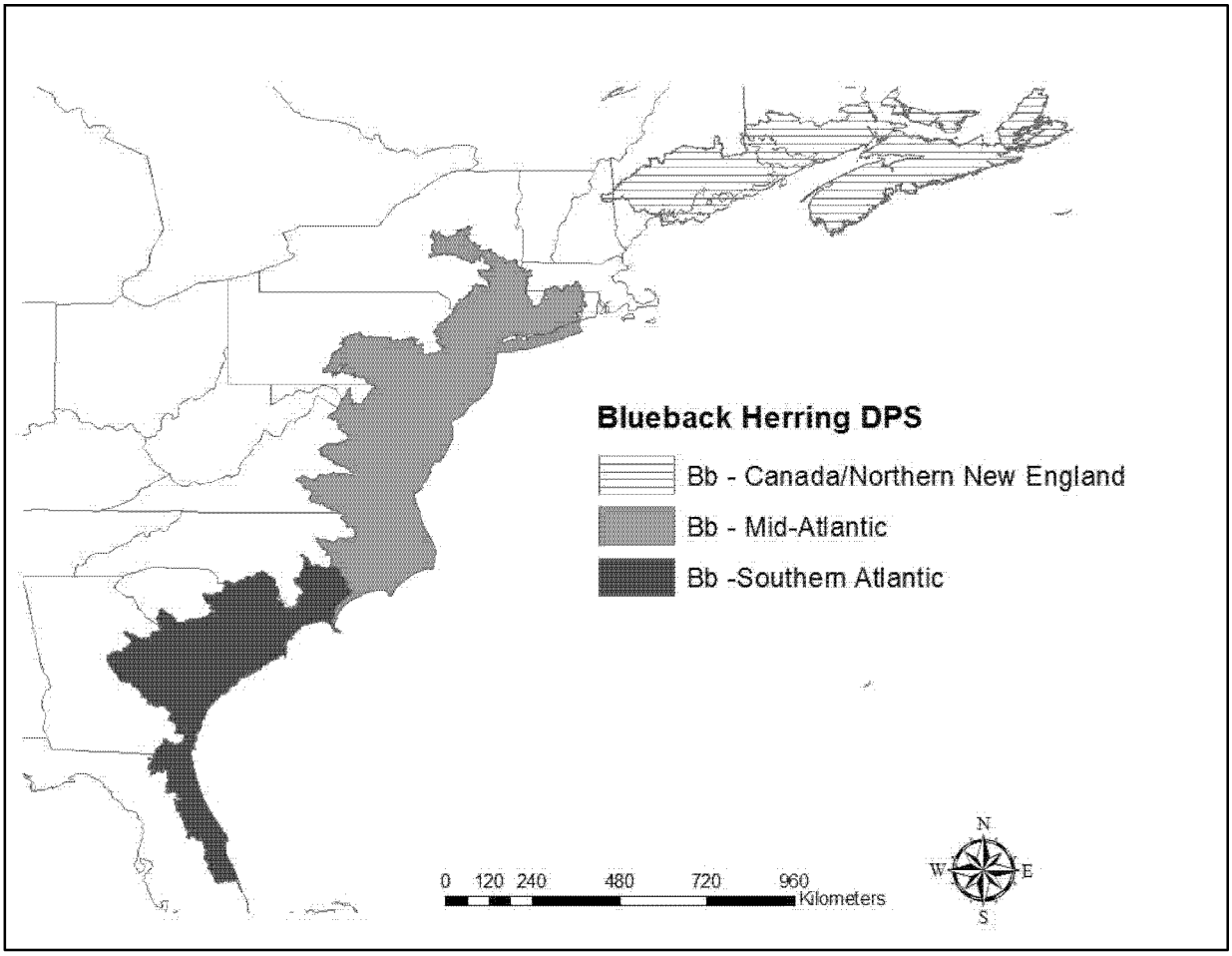

Figure 4. Map of Blueback herring Distinct Populations Segments (DPS): Bb-Canada/Northern New England DPS, Bb-Mid-Atlantic DPS, and, Bb-Southern Atlantic DPS.

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Assessment of Extinction Risk

Foreseeable Future

The ESA defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range and a threatened species as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6) and (20)). The term ''foreseeable future'' is not further defined or described within the ESA. However, consistent with our past practice, we describe the ''foreseeable future'' on a case-by-case basis, using the best available data for the particular species, and taking into consideration factors such as the species' life history characteristics, threat projection time frames, and environmental variability. We interpret the foreseeable future as extending only so far into the future as we can reasonably determine that both the threats and the particular species' responses to those threats are likely. Because a species may be susceptible to a variety of threats for which different data are available, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years.

Highly productive species with short generation times (*e.g.,* river herring) are more resilient than less productive, long-lived species, as they are quickly able to take advantage of available habitats for reproduction (Mace *et al.* 2002). Species with shorter generation times, such as river herring (4 to 6 years), experience greater population variability than species with long generation times, because they maintain the capacity to replenish themselves more quickly following a period of low survival (Mace *et al.* 2002). Consequently, given the high population variability among clupeids, projecting out further than a few generations could lead to considerable uncertainty in predicting the response to threats for each species.

As described below, the SRT determined that dams, water withdrawal, poor water quality, incidental catch, inadequacy of regulations, and climate change vulnerability are the main threats to both species. The SRT determined, and we agree, the foreseeable future is best defined by a 12 to 18 year time frame (*i.e.,* out to 2030–2036), or a three-generation time period, for each species for both alewife and blueback herring. This is a period in which impacts of present threats to the species could be realized in the form of noticeable population declines, as demonstrated in the available survey and fisheries data. This timeframe would allow for reliable predictions regarding the impact of current levels of mortality on the biological status of the two species.

Evaluation of Demographic Risks

In determining the extinction risk of a species, it is important to consider both the demographic risks facing the species as well as current and potential threats that may affect the species' status. To this end, a qualitative demographic analysis was conducted for the alewife and blueback herring. A demographic risk analysis is an assessment of the manifestation of past threats that have contributed to the species' current status, and it informs the consideration of the biological response of the species to present and future threats.

The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews (see *http://www.nmfs.noaa.gov/pr/species* for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four demographic viability factors: Abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viability factors reflect concepts that are well founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

Using these concepts, the SRT evaluated demographic risks by individually assigning a risk score to each of the four demographic criteria (abundance, growth rate/productivity, spatial structure/connectivity, diversity). Qualitative reference levels with ranking scores of whole numbers from 1–5 of ''*very low,*'' ''*low,*'' ''*moderate,*'' ''*high,*'' and ''*very high*'' were used to describe the risk of demographic criteria. A factor (or viable population descriptor) was ranked (1) *very low* if it was unlikely that this descriptor contributed significantly to risk of extinction, either by itself or in combination with other viable population descriptors. A factor was ranked (2) *low* risk if it was unlikely that this descriptor contributed significantly to long-term or near future risk of extinction by itself, but there was some concern that it may, in combination with other viable population descriptors. A factor was ranked (3) *moderate* risk if this descriptor contributed significantly to long-term risk of extinction, but did not in itself constitute a danger of extinction in the near future. A factor was ranked (4) *high* risk if this descriptor contributed significantly to long-term risk of extinction and was likely to contribute to short-term risk of extinction in the near future, and a factor was ranked (5) *very high* risk if this descriptor by itself indicated danger of extinction in the near future.

Each SRT member scored each demographic factor individually. Each SRT member identified other demographic factors and/or threats that would work in combination with factors ranked in the higher categories to increase risk to the species. SRT members provided their expert opinions for each of the demographic risks, including considerations outlined in McElhany *et al.* (2000) and the supporting data on which it was based, and discussed their opinions with the other SRT members. SRT members were then given the opportunity to adjust their individual scores, if desired. These adjusted scores were tallied, reviewed, and then combined for an overall extinction risk determination (see below). This scoring was carried out for both species rangewide and for each DPS, and the demographic scoring summary is presented below. Here the SRT's qualitative ranking for each demographic factor is identified by rounding the mean ranking score, which is provided in parentheses. For example, a demographic factor falling between the *low* (2) and *moderate* (3) risk rankings with a mean ranking score of 2.1 will be identified as *low* (2.1), while a factor with a mean ranking score of 2.5 will be identified as *moderate* (2.5). As noted throughout this section and in the Threats Assessments section and in the corresponding sections of the Status Review Report, many of the mean ranking scores fall between *low* (2), and *moderate* (3). Only a few scores were found to be 3 or higher. As more fully explained in the Status Review Report, the SRT used a scale of whole numbers from 1 to 5 (NMFS, 2019).

Alewife

Abundance

The SRT members individually evaluated the available alewife abundance information, which is summarized in the *Abundance and Trends* section of this listing determination and additional detail can be found in the Status Review Report (NMFS 2019). Alewife abundance has declined significantly from historical levels throughout its range (ASMFC 2017a, ASMFC 2012a, Limburg and Waldman (2009).

While abundance is at or near historical lows, the recent stock assessment update reported few declining abundance trends by dataset in recent years (ASMFC 2017a). The ASMFC River Herring Stock Assessment assessed data from the last ten years (2006–2015) and reported that no run counts reflect declining trends with 11 of 29 showing increasing trends, 14 showing no trend, and four not being updated (two due to discontinuation and two due to agency recommendation to remove the rivers based on data discrepancies between observed river herring presences and fishway counts) (ASMFC 2017a and b). Because abundance is known to be highly variable from year to year for these species, in addition to the trend information, the SRT reviewed annual run count numbers and escapement information, when available, as part of its consideration of information that may inform the abundance estimates of these populations. Given the substantial number of runs with increasing trends and relatively large run counts reported in various portions of the range in recent years (in the hundreds of thousands throughout various regions) (ASMFC 2017a), there do not appear to be depensatory processes rangewide that result in low abundances such that the populations may be insufficient to support mate choice, sex-ratios, fertilization and recruitment success, reproductive or courting behaviors, foraging success, and predator avoidance behaviors. The SRT reviewed available abundance indices for each DPS (see NMFS 2019 for complete summary). The mean score calculated based on the SRT's scores for alewife rangewide (2.0), the Aw-Canada (2.0) DPS, the Aw-Northern New England (2.0) DPS, and the Aw-Southern New England DPS (2.1) all correspond to a *low* ranking, because the SRT found this factor is unlikely to contribute significantly to the risk of alewife extinction.

While abundance information is limited for alewife in the Aw-Canada DPS, data provide some indicators of population size in several rivers. Examples of data reviewed by the SRT included (but were not limited to): Gaspereau River, Nova Scotia time series (1970 to 2017) estimates that ranged from a low of 265,208 (1983) to 1.2 million (2016), (Billard 2017); St. John River, New Brunswick fixed escapement policy of 800,000 alewife released above the dam annually; and Tusket River in Nova Scotia estimated escapement for this stock in 2014–1015 in the range of 1.6 million to 2.3 million alewife.

For populations in the United States, comprehensive summaries of data that inform abundance reviewed by the SRT are available in the ASMFC State-Specific Reports (2017b).

The ASMFC Stock Assessment reports trends from select rivers along the

Atlantic Coast (see Table 1 of ASMFC 2017a); depending on sampling methods, these may be reported by species or in combination (*i.e.,* reported as just river herring). Within the Aw-Northern New England DPS, updated recent trends (2006–2015) for alewife were reported as increasing for the Androscoggin, Damariscotta, and Cocheco rivers. The ASMFC reported increasing trends for river herring as a whole from the Kennebec, Sebasticook, and Lamprey Rivers. The ASMFC also reported no trend for alewife in the Union River, stable river herring trends in the Exeter River, decreasing alewife trends in the Oyster River, no returns of river herring in the Taylor River, and unknown trends for the Winnicut River throughout this period (ASMFC 2017a).

Within the Aw-Southern New England DPS, updated recent trends (2006–2015) for alewife were reported as increasing for the Mattapoisett, Monument, Nemasket, Buckeye, and Bride Brook Rivers. The ASMFC reported stable river herring trends in the Parker and Gilbert Rivers; decreasing alewife trends in the Stony Brook and Nonquit Rivers; and no trends for alewife in the Mianus and Shetucket Rivers; and unknown trends in the Farmington and Naugatuck Rivers (ASMFC 2017a).

The Aw-Mid-Atlantic DPS abundance risk mean score corresponded to a *moderate* (2.7) ranking. Within the Aw-Mid-Atlantic DPS, updated recent trends (2006–2015) for alewife were reported as increasing for river herring in the Hudson River, no tend for alewife in the Delaware and Rappahannock Rivers, stable for alewife in the Nanticoke and Potomac Rivers, and unknown for alewife in the James, York, and Alligator Rivers (ASMFC 2017a). SRT members noted uncertainty about abundance in the Mid-Atlantic DPS, due to minimal available abundance information (with the exception of the Hudson, several rivers in Chesapeake Bay, and a few ASMFC time series). However, preliminary results from the Chesapeake Bay (Ogburn unpublished data) appear favorable, with abundance estimates in surveyed rivers in the 100,000s of fish. Recent estimates of alewife absolute abundance using hydroacoustics for the Roanoke River during 2008–2015 have ranged from 32,000 to 419,000 (Waine 2010, Hughes and Hightower 2015; McCargo 2018).

Growth Rate/Productivity

The SRT evaluated the available information on life history traits for alewife as they relate to this factor, as summarized in the Reproduction, Growth, and Demography section in the Status Review Report (NMFS 2019). Data are limited on growth rate/productivity, and there is little effort to systematically collect and standardize this type of data in most of the range of the species. The SRT considered previously discussed trends in abundance and reviewed trends in maximum age, average size-at-age, repeat spawners, and modeling results for the qualitative ranking of growth rate and productivity. ASMFC (2017a) reported alewife maximum age data indicate most runs had stable ages, and no trends appear reversed relative to the 2012 benchmark. Specifically, maximum age results showed no trends in the Androscoggin, Exeter, Cocheco, Monument, and Gilbert-Stuart Rivers; increasing trends in the Lamprey River (NH); and decreasing tends in the Nanticoke River (MD) and Chowan River (NC). Size at age results showed no trend in the Androscoggin, Cocheco (female), Lamprey, Winnicut, and Hudson Rivers; and decreasing trends in the Exeter (male), Monument, and Nanticoke Rivers. Additionally, for the Status Review Report, a population growth model (MARSS) was used for alewife rangewide. The MARSS model results show a population growth rate point estimate of 0.038, with the associated 95 percent confidence interval ranging from (0.005–0.071) (NMFS 2019).

The mean score calculated for this demographic factor based on SRT members' scores corresponds to a *low* ranking rangewide (2.1), and in each DPS (Aw-Canada DPS (2.0), Aw-Northern New England DPS (2.0), Aw-Southern New England DPS (2.1), and the Aw-Mid-Atlantic DPS (2.3)), as this factor is unlikely to contribute significantly to the risk of extinction for alewife. SRT members noted that rates of population growth for many rivers have shown growth in the past 5–10 years. Where mean age has been reduced, it is often in conjunction with recruitment of strong year classes as the populations rebuild. Some systems are beginning to have increases in age structure as older individuals persist. The SRT noted some runs in the southernmost portion of the range have not shown as strong or consistent improvement; this was reflected in the slightly higher numeric score and variability of the qualitative ranking for the growth rate of the Mid-Atlantic DPS (NMFS 2019).

Spatial Structure/Connectivity

The SRT evaluated the available information on alewife spatial structure (tagging and genetics information) summarized in the Population Structure section in the Status Review Report (NMFS 2019). Alewife range from North Carolina to Newfoundland, Canada. While the species exhibits homing, rates of straying and therefore dispersal help to buffer the species from threats related to loss of habitat and loss of spatial connectivity. The mean score calculated based on SRT members' scores corresponds to a *moderate* (2.6) ranking rangewide and for all DPSs (2.7–2.9), as this factor contributes significantly to long-term risk of extinction, but does not in itself constitute a danger of extinction in the near future. SRT members noted that habitat degradation and destruction threats related to human population growth will presumably continue to increase, and the cumulative effects will influence the species range wide. Reduced, restricted, and impacted spawning and nursery habitat will likely remain a limiting factor to population growth in many river systems.

Diversity

The SRT evaluated the available information on alewife diversity summarized in the Population Structure section in the Status Review Report (NMFS 2019). The available genetics studies indicate that there are a minimum of four genetic stock complexes rangewide and there is reproductive connectivity along a continuum rangewide. SRT members noted that, due to declines in abundance over the last several hundred years, the species has likely lost some genetic diversity, and therefore has lost some adaptive potential. This loss of diversity affects resilience, especially in the face of climate change. Additionally, SRT members determined that human activities of stocking and propagation have also contributed to reduced genetic diversity. Further, the SRT noted that stocking activities, coupled with habitat alterations (*e.g.,* in-river obstructions like dams), and reduced access to spawning and nursery habitat, may even result in the selection of characteristics in these fish that are conducive to survival in modified and dammed river systems.

The mean score calculated based on SRT members' scores corresponds to a *moderate* ranking rangewide (2.6) and in each of the DPSs (Aw-Canada (2.7), Aw-Northern New England (2.7), Aw-Southern New England (2.9) and Aw-Mid-Atlantic (2.9) DPS), as this descriptor contributes significantly to long-term risk of extinction, but does not in itself constitute a danger of extinction in the near future. Although still receiving a *moderate* ranking, SRT members noted that the Aw-Canada DPS

may have a slightly lower risk in comparison to other areas, as this DPS has a very large range and access to a wide variety of stream size and temperature regimes. Additionally, the SRT noted the Aw-Canada DPS likely experiences less active stocking (which has been suggested to negatively affect genetic diversity); therefore, the risk to genetic diversity in this DPS was ranked slightly lower.

Blueback Herring

Abundance

The SRT individually evaluated the available blueback herring abundance information, which is summarized in the Description of Population Abundance and Trends section of the Status Review Report (NMFS 2019). SRT members noted that the available information indicated blueback herring abundance had declined significantly from historical levels throughout its range. The SRT reviewed the recent ASMFC stock assessment update and available abundance indices for each DPS (NMFS 2019; ASMFC 2017a). Blueback herring abundance estimates were lower than available estimates for alewife, but recent run count estimates documented hundreds of thousands of fish in the Chowan River, Chesapeake Bay (Ogburn unpublished data), Connecticut River, various Massachusetts rivers, and rivers in Maine (ASMFC 2017b) and New Brunswick (Gibson *et al.* 2017). The mean score calculated based on the SRT's scores corresponds to a *moderate* ranking rangewide (3.0) and in each DPS (Bb-Canada/Northern New England (3.0), Bb-Mid-Atlantic (3.0), and Bb-Southern Atlantic (3.0) DPSs), as this factor is contributing significantly to the blueback herring's risk of extinction, but does not in itself constitute a danger of extinction in the near future.

The SRT reviewed the best available data on blueback herring abundance in the Bb-Canada/Northern New England DPS. The SRT noted that blueback herring in the St. John River, New Brunswick are managed using a fixed escapement policy of 200,000 blueback herring moved above the dam each year; this number is not indicative of abundance, but can be viewed as a minimum when escapement targets are met. The Mactaquac time series (1999 to 2017) ranged from 192,000 to 515,000, with over 489,000 blueback herring passed upstream in 2017. Escapement estimates for the Tusket River in Nova Scotia during the period of 2014 to 2015 ranged from 200,000 to 600,000 blueback herring. As noted above for alewife, the ASMFC Stock Assessment reports trends from select rivers along the Atlantic Coast (see Table 1 of ASMFC 2017a); depending on sampling methods these may be reported by species or in combination (*i.e.,* reported as just river herring). There is little stock specific information on blueback herring in Maine. Within the U.S portion of the Bb-Canada/Northern New England DPS, the ASMFC (2017a) reported trends over 2006–2015 as increasing for river herring in the Kennebec and Sebasticook Rivers. Data reported from rivers throughout this range were also reviewed, and numbers varied widely from year to year, as expected for this species. According to the most recent stock assessment report (ASMFC 2017b), blueback herring estimates for the Kennebec and Sebasticook Rivers in Maine were over 1 million fish (reported as combined species). The state of Maine conducts an annual young-of-the-year survey for six Maine rivers (1979 to 2015). Relative abundance was near zero from 1979 to 1991, and increased gradually through 2004 before declining in recent years (ASMFC 2017a).

The SRT reviewed available abundance data for the Bb-Mid-Atlantic DPS, which ranges from Connecticut to North Carolina. The ASMFC (2017a) reported increasing blueback herring trends for the Mianus and Rappahannock Rivers; stable trends for the Connecticut River, Shetucket River, and Chowan River; no trends for the Delaware and Nanticoke Rivers; and unknown trends for the Farmington, Naugatuck, Potomac, James, York, Alligator, Scuppernog, and St. Johns Rivers. Additionally, trends for river herring were reported as increasing in the Hudson (ASMFC 2017a). Data reported from rivers throughout this range were also reviewed, and numbers varied widely from year to year as expected for this species. The SRT noted blueback herring abundance estimates ranging from 500,000–700,000 during 2013–2016 in the Choptank River; 18,000–54,000 during 2016–2017 in the Patapsco River; and 500,000–950,000 during 2013–2014 in the Marshyhope River (Ogburn unpublished data). Additionally, absolute abundance estimates of blueback herring in the Roanoake River using hydroacoustics ranged from 100,000–478,000 (Waine 2010, Hughes and Hightower 2015, McCargo 2018) across studies conducted in 2008, 2009, 2010, 2011, and 2015, with the high reported in 2015. Total blueback herring population estimates (for age 3+) in the Chowan River time series (1972 to 2015) ranged from a high of 157 million (1976) to a low of 593,693 (2007; ASMFC 2017b). The most recent estimate of blueback herring abundance in the Chowan River was 5,160,983 (2015). Commercial CPUE estimates for blueback herring in the Chowan River have declined since the 1980s.

The ASMFC (2017a) reported no trend for blueback herring in the Santee Cooper River and unknown trends for the St. Johns River. Due to limited trend information, the SRT reviewed available abundance data for the Bb-Southern Atlantic DPS, including young-of-the-year push trawl estimates from Florida (2007 to 2016); CPUE estimates from Santee-Cooper River (1969 to 2015), and minimum population size estimates from the Santee-Cooper River (1990 to 2015) (ASMFC 2017b). Minimum population size estimates from the Santee Cooper River ranged from 8,503 (1990) to 3.4 million (1996); the minimum population size was estimated at 410,000 in 2015. The SRT noted increased uncertainty for Bb-Southern Atlantic abundance risk due to the small number of available indices.

Growth Rate/Productivity

The SRT evaluated the available data for blueback herring as they relate to this factor, as summarized in the Reproduction, Growth, and Demography section in the Status Review Report (NMFS 2019). Data are limited on growth rate/productivity, and there has been limited effort to systematically collect and standardize this type of data in most of the range of the species. SRT members noted that in some populations the maximum age appears to be trending upward, and blueback herring maximum age data indicate most runs had stable ages (ASMFC 2017a). On a rangewide basis, the MARSS model (NMFS 2019) showed blueback herring population growth rates of 0.05 with a 95 percent confidence interval (−0.03 to 0.13). Also, while recent abundance trends have indicated positive growth rates, trends in demographic (maximum age) and reproductive rates (repeat spawners) are largely negative or stable; the combination of these two trends is an indicator of a potentially declining growth rate, given the paucity of high accuracy abundance data for blueback herring.

The mean score calculated based on SRT member's scores corresponds to a *moderate* ranking rangewide (2.75) and in all DPSs (Bb-Canada/Northern New England DPS (2.75), Bb-Mid-Atlantic DPS (2.88) and Bb-Southern Atlantic DPS (3.0)) as this factor is contributing significantly to the blueback herring's risk of extinction, but does not in itself constitute a danger of extinction in the

near future. The lack of available data contributed to higher uncertainty around the growth rate for blueback herring.

Spatial Structure/Connectivity

The SRT evaluated the available information on blueback herring spatial structure (tagging and genetics information), summarized in the Population Structure section in the Status Review Report (NMFS 2019). Blueback herring range from Florida to Nova Scotia, spanning 20 degrees latitude and ranging thousands of kilometers along the Atlantic Coast. While the species exhibits homing, rates of straying and the resulting dispersal help to buffer the species from threats related to loss of habitat and loss of spatial connectivity. The SRT noted, however, that blueback herring likely have longer distances between populations in comparison to alewife populations (AMFC 2017a,b), which could result in less resiliency in comparison to alewife. Additionally, depending on natal river, some blueback herring have longer migratory distances from overwintering areas, thereby exposing them to a longer duration of threats in the marine environment in comparison to alewife.

Maintaining connectivity between genetic groups supports proper metapopulation function. Ensuring that populations are well represented across a variety of river systems help to maintain and enhance population resilience and genetic variability (McElhany *et al.* 2000). Blueback herring appear to have connected populations and genetic exchange with bordering populations. However, Reid *et al.* (2018) noted that the Bb-Southern Atlantic population appears to be the most distinct genetically from other populations, suggesting that gene flow and connectivity may be more limited in this DPS compared to other DPSs. Still the range of the Bb-Southern Atlantic population stretches over a wide area, and the SRT noted obstructions were more likely found farther up river in this region, providing more accessible habitat for the species.

The mean score calculated based on SRT member's scores rangewide (2.87) and in each DPS (Bb-Canada/Northern New England DPS (2.86), Bb-Mid-Atlantic DPS (2.88), and Bb-Southern Atlantic DPS (2.71)) corresponds to a *moderate* ranking rangewide, as this factor is contributing significantly to the blueback herring's risk of extinction, but does not in itself constitute a danger of extinction in the near future.

Diversity

The SRT evaluated the available information on blueback herring diversity summarized in the Population Structure section in the Status Review Report (NMFS 2019). The available genetics studies indicate that there are a minimum of five genetic stock complexes rangewide and there is evidence of reproductive connectivity along a continuum rangewide. However, blueback herring exhibit larger distances between populations when compared to alewives (ASMFC 2017a,b), thus in comparison, alewife may be better positioned to maintain genetic diversity (through mixing with bordering populations). The SRT noted that due to declines in abundance over the last several hundred years, the species has likely lost genetic diversity and therefore has lost some amount of adaptive potential. This loss of diversity affects resiliency, especially in the face of climate change. Additionally, SRT members felt that human activities of stocking and propagation have also contributed to reduced genetic diversity. The mean score calculated based on SRT member's scores correspond to a *moderate* ranking rangewide (3.1) and in each DPS (Bb-Canada/Northern New England DPS (3.14), Bb-Mid-Atlantic DPS (3.0), and Bb-Southern Atlantic DPS (3.14)), as this descriptor contributes significantly to long-term risk of extinction, but does not in itself constitute a danger of extinction in the near future.

Evaluation of Threats

Next the SRT considered whether any of the five factors (specified in section 4(a)(1) of the ESA) are contributing to the extinction risk of alewife or blueback herring. Threats considered included habitat destruction, modification, or curtailment; overutilization; disease or predation; inadequacy of existing regulatory mechanisms; and other natural or manmade threats, because these are the five factors identified in section 4(a)(1) of the ESA.

The SRT identified the following threats falling under the five factors reviewed for listing determinations (see section 4 of the Status Review Report, NMFS 2019): Climate change and variability, climate change and vulnerability, dams and other barriers, dredging/channelization, water quality, water withdrawal, directed commercial harvest, retained and discarded incidental catch (including slippage), recreational harvest, scientific research, educational use, disease, predation, inadequacy of existing regulations (international, Federal and state), competition, artificial propagation, hybrids, and landlocked populations. The SRT conducted a qualitative ranking of the severity of each of these threats to alewife and blueback herring rangewide and for each identified DPS. SRT members ranked the threats for the alewife and blueback herring at a rangewide scale and then by each DPS.

The SRT members used the ''likelihood point'' (Forest Ecosystem Management Assessment Team or FEMAT) method to allow individuals to express uncertainty in determining the contribution to extinction risk of each threat to the species (see Status Review Report, NMFS 2019). Each SRT member was allotted five likelihood points to rank each threat. SRT members individually ranked the severity of each threat through the allocation of these five likelihood points across five ranking criteria ranging from a score of ''*very low* contribution'' to ''*very high* contribution.'' A threat was given a rank of *very low* if it is unlikely that the threat contributes significantly to risk of extinction, either by itself or in combination with other threats. That is, it is unlikely that the threat will have population-level impacts that reduce the viability of the species. A threat was ranked as *low* contribution if it is unlikely that the threat contributes significantly to long-term or near future risk of extinction by itself, but there is some concern that it may do so, in combination with other threats. A threat was ranked as *medium* contribution if the threat contributes significantly to long-term risk of extinction, but does not in itself constitute a danger of extinction in the near future. A threat was ranked *high* contribution if the threat contributes significantly to long-term risk of extinction and is likely to contribute to short-term risk of extinction in the near future. Finally, a threat was ranked *very high* contribution if the threat by itself indicates a danger of extinction in the near future. Detailed definitions of the risk scores can be found in the Status Review Report (NMFS 2019).

The SRT also considered the ranking with respect to the interactions with other factors and threats. For example, the SRT found that threats due to the inadequacy of existing regulatory mechanisms may interact with the threat of overutilization and slow population growth rates (a demographic factor) to increase the risk extinction.

SRT members were asked to rank the effect that the threat was currently having on the extinction risk of the species. Each SRT member could allocate all five likelihood points to one

ranking criterion or distribute the likelihood points across several ranking criteria to account for any uncertainty. Each individual SRT member distributed the likelihood points as she/he deemed appropriate, with the condition that all five likelihood points had to be used for each threat. SRT members also had the option of ranking the threat as ''0'' to indicate that, in their opinion, there was insufficient data to assign a score, or ''N/A'' if in their opinion the threat was not relevant to the species either throughout its range or for individual stock complexes. When a SRT member chose either N/A (Not Applicable) or 0 (Unknown) for a threat, all five likelihood points had to be assigned to that category only.

During the group discussion, the SRT members were asked to identify other threat(s) or demographic factor(s) that were interacting with the threats or demographic factors to increase the species' extinction risk. As scores were provided by individual SRT members, each individual stated his or her expert opinion regarding each of the threats, and the supporting data on which it was based.

We summarize the threats to alewife and blueback herring below. The SRT's qualitative ranking is identified by rounding the mean ranking score, which is provided in parentheses. For example, a threat falling between the *low* (2) and *medium* (3) rankings with a mean ranking score of 2.1 will be identified as *low* (2.1), while a threat with a mean score of 2.5 will be identified as *medium* (2.5). As noted throughout this section and in the Threats Assessments sections of the Status Review Report, many of the mean ranking scores fall between *very low* (1), *low* (2), and *medium* (3); only a few scores were found to be 3 or higher. A detailed account of the rankings is provided in section 6 of the Status Review Report (NMFS 2019).

A. Habitat Destruction, Modification, or Curtailment

The SRT assessed six different factors that may contribute to destruction, modification or curtailment of habitat: Climate change and variability, climate change and vulnerability, dams and other barriers, dredging/channelization, water quality, and water withdrawal. All threats listed in this category scored in the *low* or *medium* contribution to extinction risk categories. Dams and other barriers and water withdrawal were the highest ranked alewife threats in this category. Dams and other barriers, water quality, and water withdrawal were the highest ranked blueback herring threats in this category.

Climate Change and Variability

Climate change and variability are discussed in section 4.1.1 of the Status Review Report (NMFS 2019); below we provide a summary. The SRT evaluated the available information on climate change and climate variability as summarized in the status review (NMFS 2019). River herring range from Canada through Florida in both marine and freshwater environments, and, in many of these areas, there has been reported environmental change. For example, the climate of the Northeast U.S. continental shelf (U.S. Northeast Shelf) is changing both as a result of anthropogenic climate change and natural climate variability (Hare *et al.* 2016a, Hare *et al.* 2016b). Ocean temperature over the last decade in the U.S. Northeast Shelf and surrounding Northwest Atlantic waters have warmed faster than the global average (Pershing *et al.* 2015). New projections also suggest that this region will warm two to three times faster than the global average from a predicted northward shift in the Gulf Stream (Saba *et al.* 2016). Hare *et al.* (2016a) provides a literature summary of how the climate system is changing on the U.S. Northeast Shelf; changes include a high rate of sea-level rise, as well as increases in annual precipitation and river flow, magnitude of extreme precipitation events, and magnitude and frequency of floods. NMFS (2017a) provides a literature summary of climate change drivers in the South Atlantic, which include warming ocean temperatures and sea level rise. The combination of increases in water temperature, coupled with associated changes in water composition, is believed to be one of the most significant risk drivers in the oceans and freshwater habitats in Canada (DFO 2012). Both natural climate variability and anthropogenic-forced climate change will affect river herring. For example, the species is likely to be impacted by climate change through changes in the amount of preferred marine habitat (Lynch *et al.* 2015).

Changes to riverine flows and habitat due to extreme events will impact both spawning and early life stages of fish (Tommasi *et al.* 2015), while migratory patterns and food availability will be two of many impacts of a changing climate on the ocean stages. As water temperatures continue to increase, river herring's coastal ranges may shrink and shift northward. A contraction of their range could result in natural or anthropogenic catastrophic events having a larger impact on the species' extinction risk.

Alewife

The SRT ranked climate change variability as *low* (2.4) rangewide and *medium* (2.5–2.7) in each DPS. The SRT noted uncertainty makes it difficult to determine the degree to which current limitations in predicting the specific changes that will occur within river herring habitat across the range may impact river herring in the foreseeable future. While mean rankings scores were close rangewide and across the DPSs, the SRT ranked the Aw-Southern New England (*medium,* 2.6) and the Aw-Mid-Atlantic (*medium,* 2.7) DPSs threat score for climate variability slightly higher. The SRT noted the large estuary ecosystems within the Aw-Southern New England DPS could be severely impacted by river/ocean warming and sea level rise. Additionally, rivers in this DPS are situated in areas with high population densities and with predicted population growth, which will likely decrease the amount of water available for river herring and lead to juveniles being unable to emigrate from nursery habitats. Increased impervious surfaces, as well as anthropogenic responses to rising sea levels are likely to increase flow variability in this DPS. The Aw-Mid-Atlantic DPS constitutes the southern edge of the range. It will likely be the first to see extreme riverine temperatures during spawning and juvenile phases. In addition, many of the known runs in this DPS are in larger river systems, and spawning success will likely be negatively impacted by the extreme spring flows as well as the increased summertime salt intrusions predicted to occur due to climate change.

Blueback Herring

The overall mean blueback herring rangewide score for climate change variability corresponded to a *low* (2.1) ranking rangewide and in the Bb-Canada/Northern New England DPS (*low,* 2.2) and Bb-Mid-Atlantic DPS (*low,* 2.1). The Bb-Southern Atlantic DPS score for climate change and variability corresponded to a *medium* (2.6) ranking. The Bb-Southern Atlantic DPS constitutes the southern edge of the range and will be the first to experience extreme riverine temperatures during spawning and juvenile phases. In addition, many of the known runs in this DPS are in larger river systems, and spawning success will likely be negatively impacted by the extreme spring flows as well as the increased summertime salt intrusions predicted to

occur due to climate change. The interacting effects of climate change with anthropogenic changes, especially in relation to temperature and flow, carry a potentially significant threat.

Climate Change and Vulnerability

Climate change and vulnerability is discussed in section 4.1.2 of the Status Review (NMFS 2019), and below we provide a summary.

Alewife

The mean scores for climate change and vulnerability for alewife rangewide corresponded to a *medium* (2.6) ranking rangewide and in each DPS (2.7–2.8). While mean ranking scores were close rangewide and across the DPSs, the SRT predicted that alewives in more southern portions of the range were at a slightly higher risk from climate change and vulnerability due to the reduced timeline of predicted impacts from this threat.

Alewife in the Aw-Mid-Atlantic DPS (*medium,* 2.8) will likely be the first to see extreme riverine temperatures during spawning and juvenile phases. Additionally, fish at the edges of the range will be most impacted by changes in ocean currents due to climate change, as these fish have the longest ocean migrations to known overwintering areas. Alewife populations could expand northward, however it is unknown if expansion could occur fast enough to preserve genetic integrity of this DPS. This threat is magnified because there will be minimal opportunity to control negative climatic effects as they become more apparent.

Blueback Herring

The overall mean score for climate change and vulnerability corresponded to a *medium* (2.5) ranking rangewide and in each DPS (2.5–2.9). The SRT noted that blueback herring currently persist in warmer habitats than alewives and therefore may be more resilient to warmer temperatures. However, the largest populations of blueback herring appear to be concentrated farther south (Mid-Atlantic) than alewives, therefore the SRT expected the threats from climate change vulnerability to be greater for blueback herring than that experienced by alewives. Early life stage growth/survival and successful spawning events are temperature dependent. Increasing and irregular water temperature regimes will have large impacts at these stages. While mean ranking scores were close rangewide and across the DPSs, the SRT predicted that climate change and vulnerability threats would be greatest in the Bb-Southern Atlantic DPS (*medium,* 2.9) because this region will be the first to experience extreme temperatures during spawning and juvenile phases. Numerous shifts in range and other signs of thermal stress have been observed in fish species in this region, and the same can be expected for blueback herring. Being at the southern end of the species' range, one would expect that they are already at the maximum tolerance for temperature effects. Additionally, anthropogenic responses to climate change may include construction of floodgates, berms around cities, and changes in water structures, which may further reduce access to spawning habitat. This threat is magnified because there will be minimal opportunity to control negative climatic effects as they become more apparent.

Dams and Other Barriers

Dams and other barriers are discussed in section 4.1.3 of the Status Review Report (NMFS 2019), and below we provide a summary. Dams and other barriers to upstream and downstream passage (*e.g.,* culverts, tidal and amenity barrages) can block or impede access to habitats necessary for spawning and rearing; can cause direct and indirect mortality from injuries incurred while passing over dams, through downstream passage facilities, or through hydropower turbines; and can degrade habitat features necessary to support essential river herring life history functions. As described in more detail in the Status Review Report (NMFS 2019), dams are also known to impact river herring through various mechanisms, such as habitat alteration, fish passage delays, and entrainment (injury from transport along with the flow of water) and impingement (injury related to colliding with any part of a dam; Ruggles 1980, NRC 2004). River herring can experience delayed mortality from injuries such as scale loss, lacerations, bruising, eye or fin damage, or internal hemorrhaging when passing through turbines, over spillways, and through bypasses (Amaral *et al.* 2012). Man-made barriers that block or impede access to rivers throughout the entire historical range of river herring have resulted in significant losses of historical spawning habitat for river herring.

Dams and other man-made barriers have contributed to the historical and current declines in abundance of both blueback herring and alewife populations. While estimates of habitat loss over the entire range of river herring are not available, estimates from studies in Maine show that less than 5 percent of lake spawning habitat and 20 percent of river habitat remains accessible for river herring (Hall *et al.* 2010). Mattocks *et al.* (2017) estimated that, due to damming, only 6.7 percent and 7.9 percent of stream habitat in the Connecticut and Merrimack Rivers, respectively, is accessible. The Merrimack and Thames-Pawtucket watersheds had the greatest losses in lake habitat due to damming, with 2.8 percent and 6.4 percent, respectively, of available habitat in 1900. Total biomass lost due to damming from 1630 to 2014 was estimated to be 7 million mt (freshwater) and 2.4 million mt (marine; Mattocks *et al.* 2017).

Dams prevent access to historical spawning habitat (*e.g.,* Hall *et al.* 2012, Mattocks *et al.* 2016), and also alter stream continuity and impair water quality on a number of levels. Dams and other barriers often affect migration rates, influencing both upstream and downstream migration of adults and downstream migration of juveniles. Delayed migration can have serious impacts at both life stages, including impacts on the timing of forage (zooplankton availability) as well as on predator avoidance for juveniles, and preferred spawning temperatures for adults (McCord 2005). Finally, dams often have detrimental nutrient and temperature impacts on downstream river communities affecting both adult and early life stages (MEOEA 2005).

The passage solutions to get fish above dams can have a wide range of efficacy, and in some instances can be quite ineffective. Constructed fish passage also does not restore full riverine continuity or address water quality concerns. Further, both nature-like and technical fishways are engineered and built to function on flows modeled from historical records. Deviations in future flow patterns due to climate change could greatly reduce fishway efficacy.

Alewife

Because dams and other man-made barriers may result in a variety of impacts (discussed above), the overall mean score corresponded to a *medium* (2.9) threat for alewife rangewide ranking and in each of the DPSs (3.1–3.4). While the SRT noted that risks to the two species are similar in nature, there is some evidence, that, of the two river herring species, alewife are better adapted to navigating fishways (K. Sullivan, pers. comm; B.Gahagan, unpublished). Specific barriers vary across the range, and threats related to the Aw- Canada DPS include (1) head-of-tide dams that block access to freshwater habitat and (2) increased prevalence of dams and tidal barrages in

the Bay of Fundy, Minas Basin, and the St. Croix River. The SRT noted that there were limited data on barriers in this region to be able to assess the threat on alewife. A majority of SRT members spread their ranking scores to reflect greater uncertainty regarding the severity of this threat across this region.

The SRT determined that threats to alewife posed by dams and other barriers within the range of the Aw-Northern New England (*medium,* 3.3) and the Aw-Southern New England (*medium,* 3.4) DPS are more severe compared to those on a rangewide scale. The SRT took into account that these regions were the epicenters of colonial and industrial era dam building, and many of these structures remain in this area.

In the Aw-Northern New England DPS, the ASFMC (2017b) reports dam construction in Maine during the last century isolated many of the inland waters currently stocked with alewives. The historical significance of anadromous fish to these waters was eventually lost, and freshwater fish communities, especially recreationally important game fish, began dominating these habitats. Access to much of the river herring habitat in Maine is still blocked by dams (without upstream fish passage) and other impediments (ASFMC 2017b).

According to ASFMC (2017b), resource agencies in Maine are making progress by installing upstream and downstream fish passage facilities, especially in the Sebasticook River watershed and smaller coastal watersheds. In recent years, rock-ramp or nature-like fishways have become increasingly popular for passing river herring in Maine. In New Hampshire, restoration of diadromous fish populations began with construction of fishways in the late 1950s and continued through the early 1970s by the New Hampshire Fish and Game Department (NHFGD) in the Exeter, Lamprey, Winnicut, Oyster, and Cocheco Rivers in the Great Bay Estuary and the Taylor River in the Hampton-Seabrook Estuary. These fishways re-opened acres of freshwater spawning and nursery habitat for river herring (ASFMC 2017b).

The SRT determined that threats posed by dams and other barriers within the range of the Aw-Southern New England DPS are more severe compared to those on a rangewide scale. According to ASMFC (2017b), there are over 500 dams within the historic range of river herring in Connecticut. Access to habitat previously blocked has been restored through construction of fishways and dam removal, providing more spawning habitat to increase production. Since 1990, 11 dams have been removed and 53 fishways have been constructed throughout the state, with more projects being completed each year.

In Rhode Island, the Division of Fish and Wildlife is partnering with government agencies, NGOs, and private entities on a variety of anadromous habitat restoration projects throughout the state. Projects include constructing new fishways, culvert modifications, and dam removals to enhance spawning and nursery habitat (ASFMC 2017b). Gilbert Stuart and Nonquit Rivers river herring stocks are predominantly alewives. At Gilbert Stuart River, the Alaskan steeppass has been the primary survey site for monitoring adult river herring since 1981. Edwards (2015) reported that the fishway passed over 290,000 fish in 2000, and in recent years estimates of one thousand fish per hour have been observed. The Denil fishway at Nonquit River has been the primary survey site for monitoring adult river herring since 1999. In 1999, the fishway passed over 230,000 fish (Edwards 2015). Buckeye Brook (RI) is a free-flowing system, and river herring migrate to Warwick Pond without obstruction (ASFMC 2017b).

Despite the aforementioned state-run fish passage solutions, the SRT determined that dams and other barriers are a more pertinent threat to the species in this DPS because alewife are typically more reliant on habitats upstream of dams for reproductive success. The SRT noted that the Aw-Southern New England DPS, like the Aw-Northern New England DPS, has many more dams located closer to the head of tide compared to the other DPSs. As a result, there is limited spawning habitat below these dams, and spawning runs are heavily influenced by management practices (*e.g.* truck and transport, fish lifts, fishway maintenance).

The average score for dams and other barriers in the Aw-Mid-Atlantic DPS (*medium,* 3.1) was slightly lower than the two northern DPSs' scores. Specific barrier threats related to this DPS include the presence of man-made barriers within the historic range of river herring. While dams and other barriers to fish migration are widely distributed throughout this DPS, the SRT noted that the existing dams are generally further upstream, leaving relatively more habitat below the dams. As such, the SRT determined that barrier threats related to the Aw-Mid-Atlantic DPS are similar (and possibly less severe) compared to those considered in the rangewide analysis.

In New Jersey, restoration programs for river herring have been limited to the installation of fish ladders and occasional minor trap and transport programs or dam removal. Fish ladders have also been installed in Delaware to restore river herring runs. Twelve tidal streams located within the Delaware River/Bay watershed have fish ladders installed (eight in Delaware and four in New Jersey) at the first upstream dam to allow for river herring passage into the non-tidal impoundments above the dams.

In addition to fish passage installations, dam removal has been the focus of restoration effort is some states. In May 2016, the first dam upstream of the confluence with the Hudson River was removed from the Wynants Kill, a relatively small tributary in Troy, NY, downstream of the Federal Dam. According to ASMFC (2017b) within days of the removal, hundreds of river herring moved past the former dam location into upstream habitat. Subsequent sampling efforts yielded river herring eggs, providing evidence that river herring were actively spawning in the newly available habitat. This dam removal will provide an additional half km (0.3 mi) of spawning habitat for river herring that has not been available for 85 years (ASMFC 2017b). Similarly, Maryland DNR's Fish Passage program has completed 79 projects, reopening a total 735.5 km (457 mi) of upstream spawning habitat in Maryland since 2005.

In Pennsylvania, dam removals along with installation of fish passage have opened up 100 river miles to migratory fish. In 2000 and 2001, river herring were transported to the Conestoga River, a tributary of the Susquehanna River in Pennsylvania. The transported river herring left the Conestoga River, moved up the mainstem Susquehanna River, and were observed at the Safe Harbor Dam. Transports to the Conestoga River included 1,820 alewives in 2000.

Several states within the range of this DPS have implemented restoration programs focused on a range of solutions to fish passage. These solutions include fish passage installation, dam removal, and trap-and-transport initiatives. An abundance of available coastal and estuarine habitat and the presence of long undammed sections of major rivers within the range of this DPS led the SRT to determine that the threat of dams was slightly reduced in this region compared to other DPSs.

Blueback Herring

The overall mean score for dams and other barriers corresponded to a

medium (3.1) threat ranking rangewide and in each DPS (2.6–3.3).

The SRT ranked the Bb-Canada/Northern New England slightly elevated (*medium,* 3.3) compared to the rangewide score. Specific barrier threats related to the Bb-Canada/Northern New England DPS include (1) head-of-tide dams that block access to freshwater habitat, and (2) increased prevalence of dams and tidal barrages in the Bay of Fundy, Minas Basin, and St. Croix River. The SRT took into account that the region was one of the epicenters of colonial and industrial era dam building and that many of these structures remain in this area. According to ASFMC (2017a), dam construction in Maine during the last century isolated many of the inland waters. The historical significance of anadromous fish to these waters was eventually lost, and freshwater fish communities, especially recreationally important game fish, began dominating these habitats.

Access to much of river herring habitat in Maine is still blocked by dams without upstream fish passage and other impediments (ASFMC 2017a). The SRT took into account high mortality associated with the tidal barrages present in the Canadian portion of the range. The SRT noted that, compared to other DPSs, there are many more dams closer to the head of tide in this region. As a result, there is limited spawning habitat below these dams, and spawning runs are heavily influenced by management practices (*e.g.,* truck and transport, fish lifts, fishway maintenance).

According to ASFMC (2017a), resource agencies in Maine are making progress by installing upstream and downstream fish passage facilities, especially in the Sebasticook River watershed and smaller coastal watersheds. In recent years, rock-ramp or nature-like fishways have become increasingly popular for passing river herring in Maine. In Maine, blueback herring populations appear to be increasing in the upper regions of the state's watersheds (ASFMC 2017a).

The overall mean score for dams and other barriers corresponded to a *medium* (3.0) threat ranking in the Bb-Mid-Atlantic DPS, slightly lower than the rangewide score. Specific barrier threats related to this DPS include the presence of man-made barriers within the historic range of river herring. While dams and other barriers to fish migration continue to be present in states within the range of this DPS, the SRT noted that the dams that do exist in the region are further upriver, leaving a lot of blueback herring habitat below the dams. As such, the SRT determined that barrier threats related to the Bb-Mid-Atlantic DPS are similar (and possibly less severe) compared to those considered in the rangewide analysis.

Several states within the range of this DPS have implemented restoration programs focused on a range of solutions to fish passage. These solutions include fish passage installation, dam removal, and trap-and-transport initiatives.

In Connecticut, the largest blueback herring run has historically been found in the Connecticut River. Between 1849 and 1955, anadromous fish had no access above the Holyoke Dam, in Holyoke, Massachusetts. Today, the Connecticut River blueback herring population size below the Holyoke Dam is unknown, and there are insufficient historical data to make an estimate. However, according to ASFMC (2017a), there continues to be stable juvenile blueback herring production in recent years with index values comparable to values produced with passage of several hundred thousand of fish at the lift despite the lack of adults passed at the Holyoke Dam. It is unknown as to whether or not the peak values of passage at the Holyoke Dam are a sustainable population for the Connecticut River above the Holyoke Dam, since there is not enough historical population data.

The SRT ranked the threat of dams in Bb-Southern Atlantic DPS as a *medium* (2.6), with a slightly lower score than the rangewide and other DPS scores. An abundance of available coastal and estuarine habitat and the presence of long undammed sections of major rivers within the range of this DPS led the SRT to rank the mean score lower. Specific barrier threats related to this DPS include habitat loss and alterations occurring in tributaries of Winyah Bay, the Santee-Cooper River system, and the Savannah River. The SRT noted that dams in this region are often very high in river systems and in many cases are not likely to block an abundance of blueback herring habitat. The SRT also considered this threat somewhat mitigated in this DPS by the ability of blueback herring to use successfully lotic spawning habitats such as those found below dams. The SRT added that alterations to flow regimes and thermal effects of dams are still of concern, and these concerns may grow in importance with climate change.

Documented impacts of past flow manipulations support the SRT's assessment. In 1938, a large diversion project to move water from the Santee River to the Cooper River was initiated. The project resulted in the construction of the Wilson Dam for flood control on Santee River at km 143, which created Lake Marion, and the construction of Pinopolis Dam at km 77 on the Cooper River, which is a hydroelectric facility with a navigation lock. According to Cooke and Coale (1996), large numbers of blueback herring that utilized the Cooper River before rediversion, switched to the Santee River after rediversion.

Dredging and Habitat Alteration

Dredging and habitat alteration are discussed in section 4.1.4 of the Status Review Report (NMFS 2019), and below we provide a summary.

Wetlands provide migratory corridors and spawning habitat for river herring. The combination of incremental losses of wetland habitat, changes in hydrology, and inputs of nutrients and chemicals over time, can be extremely harmful, resulting in diseases and declines in the abundance and quality of habitat. Wetland loss is a cumulative impact that results from activities related to dredging/dredge spoil placement, port development, marinas, solid waste disposal, ocean disposal, and marine mining. In the late 1970s and early 1980s, the United States was losing wetlands at an estimated rate of 300,000 acres (1,214 square kilometer (km^2)) per year. The Clean Water Act and state wetland protection programs helped decrease wetland losses to 117,000 acres (473 km^2) per year between 1985 and 1995. Estimates of total wetland loss vary according to the different agencies. The U.S. Department of Agriculture attributes 57 percent of wetland loss to development, 20 percent to agriculture, 13 percent to creation of deepwater habitat, and 10 percent to forest land, rangeland, and other uses. Of the wetlands lost between 1985 and 1995, the USFWS estimates that 79 percent of wetlands were lost to upland agriculture. Urban development and other types of land use activities were responsible for 6 percent and 15 percent of wetland loss, respectively.

Similar to dams, dredging has affected historical spawning and nursery habitats. Maintenance dredging continues to reduce available habitat, negatively affect water quality, and s change river flows. Although regulated through Federal and state permitting, dredging and shoreline hardening associated with estuary/coastline development are not likely to decrease in spatial extent or scope through the next century. Both practices reduce wetland and nearshore habitats, impacting nursery habitats for river herring, including the macrophytes and

natural streamflow important to nearshore ecosystem health.

Alewife

The SRT ranked the threat of dredging/channelization rangewide and in each DPS as *low* (1.5–1.7). The SRT ranked the threat of dredging in the Aw-Mid-Atlantic DPS (*low,* 1.7) to be at slightly higher risk compared to other DPSs. The increased volume of industrial activity and growing number of dredge projects in the Aw-Mid-Atlantic DPS may pose a greater risk to alewife compared to other regions. This DPS encompasses several hundred miles of dredged river channels, as well as the ports of New York and New Jersey, Baltimore Harbor, the Hudson and Delaware Rivers, and the Chesapeake Bay, all of which are subject to regular dredging.

Blueback Herring

The SRT ranked the threat of dredging/channelization as *low* (2.0–2.3) rangewide and in each DPS. For the same reasons stated above for the Aw-Mid-Atlantic DPS, the SRT ranked the threat of dredging slightly higher in the Bb-Mid-Atlantic DPS (*low,* 2.3) compared to the blueback herring rangewide and other DPS scores.

Water Quality

Risks associated with changes to water quality are discussed in section 4.1.5 of the Status Review (NMFS 2019), and below we provide a summary.

Nutrient enrichment has become a major cumulative problem for many coastal waters. Nutrient loading results from the individual activities of coastal development, marinas and recreational boating, sewage treatment and disposal, industrial wastewater and solid waste disposal, ocean disposal, agriculture, and aquaculture. Excess nutrients from land-based activities accumulate in the soil, pollute the atmosphere, and groundwater, and move into streams and coastal waters. Nutrient inputs have a direct effect on water quality. For example, nutrient enrichment can stimulate growth of phytoplankton that consumes oxygen when they decay, which can lead to low dissolved oxygen that may result in fish kills (Correll 1987, Tuttle *et al.*1987, Klauda *et al.* 1991b); this condition is known as eutrophication.

From the 1950s to the present, increased nutrient loading has made hypoxic conditions more prevalent (Officer *et al.* 1984, Mackiernan 1987, Jordan *et al.* 1992, Kemp *et al.* 1992, Cooper and Brush 1993, Secor and Gunderson 1998). Hypoxia is most likely caused by eutrophication, due mostly to non-point source pollution (*e.g.,* industrial fertilizers used in agriculture) and point source pollution (*e.g.,* urban sewage). In addition to the direct cumulative effects incurred by development activities, inshore and coastal habitats are also threatened by persistent increases in certain chemical discharges. The combination of incremental losses of wetland habitat, changes in hydrology from dams and other barriers, and nutrient and chemical inputs produced over time can be extremely harmful to marine and estuarine biota, including river herring, and can result in diseases and declines in the abundance and quality of the affected resources.

Poor water quality is an important threat in some parts of the species' range. While the large scale acute water quality issues that fueled the creation of the EPA and enactment Clean Water Act have, in many areas, been remedied, the wide impacts of increasing urbanization on the eastern coast of the United States has led to widespread deleterious conditions (*e.g.,* perennial hypoxic and anoxic areas in estuaries and nurseries, eutrophication of freshwater systems, invasive plants and eutrophication altering spawning habitat). Siltation—resulting from erosional land use practices as well as natural disturbances such as hurricanes and/or flood events reduces survival of aquatic vegetation and impacts streamflow. Additionally, climate variability may increase sedimentation in natal rivers, contributing to poorer water quality. These types of effects, often from non-point sources, occur over entire landscapes and are often more difficult to detect, measure, test, and remedy.

Alewife

The overall mean score for water quality corresponded to a *medium* (2.8) ranking rangewide and in each DPS (2.7–3.2). The threat from poor water quality was slightly elevated in the Aw-Mid-Atlantic DPS (*medium* 3.2) compared to the rangewide ranking. Many of the major estuaries in the Aw-Mid-Atlantic DPS have documented water quality issues. This DPS also has many growing population centers, and anthropogenic threats are predicted to increase in the foreseeable future. Similar to climate change and variability, the interactions between anthropogenic change and climate change are likely to have severe detrimental effects on water quality, especially water temperature, in regions at the edge of the species' tolerance.

Blueback Herring

The overall mean score for water quality corresponded to a *medium (2.9)* ranking rangewide and in each DPS (2.9–3.2). For the same reasons stated above for the Aw-Mid-Atlantic DPS, the threat of water quality was slightly elevated in the Bb-Mid-Atlantic DPS (*medium,* 3.2) compared to the rangewide ranking.

Water Withdrawal/Outfall (Physical)

Water withdrawal facilities and toxic and thermal discharges have also been identified as a threat that is impacting river herring. This threat is discussed in section 4.1.6 of the Status Review Report (NMFS 2019), and below we provide a summary of impacts to river herring.

Water withdrawal facilities impact natural streamflow and result in impingement/entrainment mortality of river herring. Disrupting streamflow can influence migratory timing as well as water quality downstream of the facility. Additionally, water withdrawal (for agriculture or other human activities) degrades or destroys habitat for river herring and poses a significant threat to their survival, especially when coupled with other threats. The threat is likely to increase alongside coastal population growth, which, in conjunction with climate change effects, will likely result in reduced base flows. Water withdrawals and reduced flows can disrupt connectivity between habitats and cause ontogenetic shifts in life history. For alewives and blueback herring to be successful, adults must be able to immigrate to nursery areas, spawn, and then emigrate. Juveniles should have adequate flow to emigrate volitionally. In this way, withdrawals act much like dams and other barriers, even though their effects are less obviously visible.

Alewife

The overall mean score for water withdrawal corresponded to a *medium* (3.2) ranking for alewife rangewide and in each DPS (2.8–3.3). The threat of water withdrawal was slightly reduced in the Aw-Canada DPS (*medium,* 2.8) compared to the rangewide ranking. Human population density and the resulting anthropogenic effects on water quality (including animal husbandry and agriculture) and the demands for water withdrawals/diversions are likely less of a threat to the species in this DPS compared to rangewide average.

Because of the lower human population density in the Aw-Northern New England DPS (*medium,* 3.0) and corresponding demands on water

resources, there is a diminished risk related to water withdrawals for the species in this region compared to the rangewide average. However, the presence of numerous head-of-tide-dams, where emigration is related to fall flows/water levels from head ponds, remains a threat.

The threat of water withdrawal was slightly elevated in the Aw-Southern New England (*medium,* 3.3) DPS compared to the rangewide ranking. Water withdrawal may be higher in the Aw-Southern New England DPS than in other areas due to high population density. Water withdrawal can lead to reduced stream flow, and the water storage capacities of impoundments can further affect temporal variability of stream flow. Similar to populations further north, populations here face an increased risk from artificially manipulated water levels in head ponds, where summer and fall emigration is dependent on adequate stream flows. As water transfers/withdrawals increase in the future, this threat will increase.

The threat of water withdrawal in the Aw-Mid-Atlantic DPS (*medium,* 3.2) was similar to the rangewide score for alewife. The SRT noted predicted high population growth rate in this region. Demand for water and anthropogenic pressures will likely increase, resulting in reduced stream flows, which affect juvenile emigration and survival.

Blueback Herring

The overall mean score for water quality corresponded to a *medium* (2.9) ranking for blueback herring rangewide and in each DPS (2.8–2.9). Because of the lower human population density in the Bb-Canada/Northern New England DPS (*medium,* 2.8) and corresponding demands on water resources, there is a diminished risk to the species as compared to the rangewide average. Human population density and the resulting anthropogenic effects on water quality (including animal husbandry and agriculture) and the demands and for water withdrawals/diversions are likely less of a threat to the species in this DPS compared to the rangewide average. The threat ranking for water withdrawal in the Bb-Mid-Atlantic DPS (*medium,* 2.9) was similar to the rangewide score. The SRT noted that predicted population growth rate in this region will drive future demand for water. As anthropogenic pressures increase, it will negatively affect water quality (hypoxia, eutrophication) in most major estuaries. Further, the interactions between anthropogenic change and climate change are likely to severely affect water quality in portions of the species' range where water quality is already impaired. The threat ranking for water withdrawal in the Bb-Southern DPS (*medium,* 2.9) was similar to the rangewide score. The SRT noted that utility water intake may be a larger issue in the Bb-Southern Atlantic DPS compared to water withdrawals rangewide.

B. Overutilization

The SRT assessed five different factors that may contribute to the overutilization of alewife: Directed commercial harvest, retained and discarded incidental catch (including slippage), recreational harvest, scientific research and educational harvest. Although ranked separately, the SRT's assessments for scientific research and educational harvest are discussed in combination below due to the limited information and similarity in overall rankings for these factors.

Directed Commercial Harvest

This threat is discussed in sections 4.2.1 of the Status Review Report (NMFS 2019). Below, we provide a summary of impacts on river herring.

Information on river herring fisheries in the United States was gathered largely from the ASMFC's benchmark assessment of river herring stocks of the U.S. Atlantic Coast from Maine through Florida (ASMFC 2012) and the River Herring Stock Assessment update (ASMFC 2017a). The ASMFC (2017a) report provides an update to the 2012 benchmark assessment of river herring. Both documents were prepared by the River Herring Stock Assessment Subcommittee (SAS) of the ASMFC's Shad and Herring Technical Committee (TC).

Domestic commercial landings of river herring were presented in the stock assessment update by state and by gear from 1887 to 2015 where available (ASMFC 2017a). Landings of alewife and blueback herring were collectively classified as ''river herring'' by most states. Only a few states had species-specific information recorded for a limited range of years. Commercial landings records were available for each state since 1887, except for Florida and the Potomac River Fisheries Commission (PRFC), which began recording landings in 1929 and 1960, respectively. It is important to note that historical landings presented in the stock assessment do not include all landings for all states over the entire period and are likely underestimates, particularly for the first third of the time series, because not all river landings were reported (ASMFC 2012, ASMFC 2017a).

During 1887 to 1938, reported commercial landings of river herring along the Atlantic Coast averaged approximately 30.5 million lbs (13,835 mt) per year. The majority of river herring landed by commercial fisheries in these early years are attributed to the mid-Atlantic region (NY to VA). The dominance of the mid-Atlantic region is, in part, due to the apparent bias in the spatial coverage of the reported landings. During this early period, landings were predominately from Maryland, North Carolina, Virginia, and Massachusetts (overall, harvest is likely underestimated because landings were not recorded consistently during this time.) Virginia made up approximately half of the commercial landings from 1929 until the 1970s, and the majority of Virginia's landings came from the Chesapeake Bay, the Potomac River, the York River, and offshore harvest.

Severe declines in landings began coast-wide in the early 1970s and, where still allowed, domestic landings are now a fraction of what they were at their peak, having remained at persistently low levels since the mid-1990s. Moratoria were enacted in Massachusetts (commercial and recreational in 2005), Rhode Island (commercial and recreational in 2006), Connecticut (commercial and recreational in 2002), Virginia (for waters flowing into North Carolina in 2007), and North Carolina (commercial and recreational in 2007). As of January 1, 2012, river herring fisheries in states or jurisdictions without an approved sustainable fisheries management plan, as required under ASMFC Amendment 2 to the Shad and River Herring Fishery Management Plan, were closed. (Note as anadromous alosines of the east coast, shad, alewife, and blueback herring are managed under the same Fisheries Management Plan; ASMFC 1987). As a result, prohibitions on harvest (commercial or recreational) were extended to New Jersey, Delaware, Pennsylvania, Maryland, DC, Virginia, Georgia and Florida (ASMFC 2012, ASMFC 2017a,b).

The ASMFC stock assessment committee calculated in-river exploitation rates of the spawning runs for five rivers (Damariscotta River (ME—alewife), Union River (ME—alewife), Monument River (MA—both species combined), Mattapoisett River (MA—alewife), and Nemasket River (MA—alewife)) by dividing in-river harvest by total run size (escapement plus harvest) for a given year (ASMFC 2012). Exploitation rates were highest (range: 0.53 to 0.98) in the Damariscotta River and Union River prior to 1985, while the exploitation was lowest (range: 0.26

to 0.68) in the Monument River. In Massachusetts, exploitation rates of both species in the Monument River and of alewives in the Mattapoisett River and Nemasket River were variable (average = 0.16) and, except for the Nemasket River, declined generally through 2005 until the moratorium was imposed. Exploitation rates of alewives in the Damariscotta River were low (<0.05) during the period from 1993 to 2000, but they increased steadily through 2004 and remained greater than 0.34 through 2008. Exploitation in the Damariscotta River dropped to 0.15 in 2009 to 2010. In-river exploitation of alewives has continued to decline in the Damariscotta River, with the lowest levels occurring in the last five years (2011–2015), with the exception of very low values that occurred in the 1990s (due to lack of harvest) (ASMFC 2017a). Exploitation rates of alewives in the Union River declined through 2005 but have remained above 0.50 since 2007 (ASMFC 2012). In-river exploitation of alewives has remained relatively stable in the Union River, but it did decline to the lowest level of the time series (2010–2015) in the terminal year of the update. Exploitation has essentially ceased on other rivers assessed during the benchmark due to moratoria (MA rivers) (ASMFC 2017a).

The coastwide index of relative exploitation also declined following a peak in the late 1980s and has remained fairly stable over the past decade. In all model runs except for one, exploitation rates coastwide declined. Exploitation rates estimated from the statistical catch-at-age model for blueback herring in the Chowan River (see Status of River Herring in North Carolina in the ASMFC 2017b stock assessment) also showed a slight declining trend from 1999 to 2007, at which time a moratorium was instituted.

There appears to be a consensus that exploitation has decreased in recent times. The stock assessment indicates that the decline in exploitation over the past decade is not surprising because river herring populations are at low levels and more restrictive regulations or moratoria have been enacted by states (ASMFC 2017a).

Fisheries in Canada for river herring are regulated through limited seasons, gears, and licenses. Licenses may cover different gear types; however, few new licenses have been issued since 1993 (DFO 2001). River-specific management plans include closures and restrictions. River herring used locally for bait in other fisheries are not accounted for in river-specific management plans (DFO 2001). DFO estimated river herring landings at just under 25.5 million lbs (11,577 mt) in 1980, 23.1 million lbs (10,487 mt) in 1988, and 11 million lbs (4,994 mt) in 1996 (DFO 2001). The largest river herring fisheries in Canadian waters occur in the Bay of Fundy, southern Gulf of Maine, New Brunswick, and in the Saint John and Miramichi Rivers where annual harvest estimates often exceed 2.2 million lbs (1,000 mt) (DFO 2001).

There is little directed effort on river herring across the Northwest Atlantic. Foreign fleet landings of river herring (reported as alewife and blueback shad) are available through the Northwest Atlantic Fisheries Organization (NAFO). Offshore exploitation of river herring and shad (generally <190 millimeters (mm) (7.5 inches) in length) by foreign fleets began in the late 1960s and landings peaked at about 80 million lbs (36,320 mt) in 1969 (ASMFC 2017a). After the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*), later retitled the Magnuson Fishery and Conservation and Management Act, and the formation of the Fishery Conservation Zone in 1977, foreign allocation of river herring (to both foreign vessels and joint venture vessels) between 1977 and 1980 was 1.1 million lbs (499 mt). The foreign allocation was reduced to 220,000 lbs (100 mt) in 1981 because of the condition of the river herring resource. In 1985, a bycatch cap of no more than 0.25 percent of total catch was enacted for the foreign fishery. The cap was exceeded once in 1987, and this shut down the foreign mackerel fishery. In 1991, amendment 4 to the Atlantic Mackerel, squid and butterfish fisheries management plan added area restrictions to exclude foreign vessels from within 20 miles (32.2 km) of shore for two reasons: (1) In response to the increased occurrence of river herring bycatch closer to shore and (2) to promote increased fishing opportunities for the domestic mackerel fleet (50 CFR part 611.50; ASMFC 2012). There have been no reported landings by foreign fleets since 1990 (ASMFC 2012, ASMFC 2017). From 1991 to 2015, the only reported catch in Areas 5 and 6 was from the United States.

Alewife

The overall mean score for alewife directed harvest corresponded to a *low* (1.7) ranking rangewide and for all DPS (1.2–2.1). Overutilization for commercial purposes was once considered one of the primary threats to alewife and blueback herring populations. Significant declines have been documented throughout much of the range for both species due to historic fishing pressure and other threats. Directed harvest does still occur in several states (see State Regulations in the Status Review Report for Maine, New Hampshire, New York, the Potomac River Fisheries Commission/District of Columbia, North Carolina, and South Carolina (NMFS 2019), and the fishing occurs during migration to spawning grounds. Amendment 2 to the ASMFC Shad and River Herring Interstate Fishery Management Plan requires states to have a sustainable fishery management plan (SFMP) for each river with a river herring fishery (beginning in 2012). SFMPs must be reviewed by the ASMFC Shad and River Herring Technical Committee for adequate sustainability measures and approved by the ASMFC Management Board. Monitoring is required on all harvested runs in the U.S. Overall, SRT members found that the current directed harvest was well regulated and occurred only on stocks that have demonstrated sustainability.

The threat ranking for directed commercial harvest was higher in the Aw-Canada DPS (*low,* 2.1) compared to the rangewide ranking and other DPSs (1.2–1.7). SRT members noted increased uncertainty related to directed harvest levels within Canada. Gibson *et al.* (2017) indicated high annual removal rates where recorded or reported. Additionally, Gibson *et al.* (2017) indicated that previous reporting and collection methods do not provide consistent and accurate information, increasing concern and uncertainty for this threat. Finally, the Department of Fisheries and Oceans still allows some fishing on mixed stocks in Canadian waters, which makes managing impacts to individual populations more difficult.

The threat ranking for directed commercial harvest was slightly higher in the Aw-Northern New England DPS (*low,* 1.7) compared to the rangewide ranking. Maine and New Hampshire currently have approved ASMFC sustainable fishing management plans within this DPS. The SRT noted uncertainty related to lack of publicly available commercial harvest data for Maine due to confidentiality; therefore, the total removals and removal rates by river system are largely unknown.

The threat ranking for directed commercial harvest was lower in the Aw-Southern New England DPS (*low,* 1.2) compared to the rangewide ranking. There is currently no directed commercial harvest conducted within the Aw-Southern New England DPS. The Nemasket River, in southern Massachusetts, has an ASMFC approved SFMP, but no harvest has occurred to date, largely due to variability in run strength. SRT members noted

uncertainty related to whether further directed harvest of alewife would be permitted within the Aw-Southern New England DPS in the foreseeable future.

The threat ranking for directed commercial harvest was lower in the Aw-Mid-Atlantic DPS (*low,* 1.6) compared to the rangewide ranking. New York is the only state to have an approved ASMFC sustainable fishing management plan within this DPS.

Blueback Herring

For the same reasons stated above for alewife, the overall mean score for blueback herring directed harvest corresponded to a *low* (1.8) ranking rangewide and for all DPS (1.5–1.9). The threat ranking for directed commercial harvest was slightly higher in the Bb-Canada/Northern New England DPS (*low,* 1.9) compared to the rangewide ranking, for the same reasons stated above for the Aw-Canada and the Aw-Northern New England DPSs including the lack of publicly available commercial harvest data for Maine. Likewise, for the same reason stated above for the Aw-Mid-Atlantic DPS ranking, this threat ranked in the *low* (1.6) category for the Bb-Mid-Atlantic DPS.

Retained and Discarded Incidental Catch (Including Slippage)

River herring are caught incidentally at sea in Federal fisheries targeting other species such as Atlantic herring, squid, and mackerel. In this section, we refer to several terms: Retained incidental catch, discarded incidental catch, slippage and bycatch. Retained incidental catch is the capture and mortality of a non-targeted species. Discarded incidental catch is the portion of the non-targeted catch brought on board and then returned to sea. Slippage is a term used to describe a process in which a boat does not bring the entire catch on board and releases part of the catch into the water, thereby potentially biasing estimates of retained and discarded incidental catch. Bycatch, under National Standard 9, refers to fish that are harvested in a fishery, but that are not sold or kept for personal use (50 CFR part 600).

The magnitude of this ocean catch is highly uncertain because of the short time series of incidental data, underreporting, and a lack of observer coverage. In addition, there are limited data on the stock composition of the incidentally caught fish and, thus, no way to partition estimates of bycatch among river systems. With no estimates of coastwide or regional stock complex abundances, it is also difficult to assess the significance of these removals on the overall population or segments of it (ASMFC 2017a).

Because bycatch occurs in marine waters, and alewife and blueback herring stock complexes overlap in their distribution in the ocean, the retained and discarded incidental catch occurs on a mixed stock complex fishery (that is, there is no ''oceanic'' stock of alewife or blueback herring, the alewife and blueback herring in the ocean come from all of the stock complexes described herein). Recent studies have also shown that alewife and blueback herring incidentally caught in a number of statistical areas were from several genetic stock complexes (Hasselman *et al.* 2016, Palkovacs unpublished). This finding increases the probability that alewife and blueback herring are being exploited from populations that do not meet sustainable harvest requirements approved through the ASMFC.

Several studies estimated river herring retained and discarded incidental catch (Cieri *et al.* 2008, Wigley *et al.* 2009, Lessard and Bryan 2011). The discard and incidental catch estimates from these studies cannot be directly compared, as they used different ratio estimators based on data from the Northeast Fishery Observer Program (NEFOP), as well as different information to quantity total catch estimates. Cieri *et al.* (2008) estimated the kept (*i.e.,* landed) portion of river herring incidental catch in the Atlantic herring fishery with an estimated average annual landed river herring catch of approximately 71,290 lbs (32.4 mt) for 2005–2007, and the corresponding coefficient of variation (CV) was 0.56. Cournane *et al.* (2012) extended this analysis with additional years of data. Further work is needed to elucidate how the incidental catch of river herring in the directed Atlantic herring fishery compares to total incidental catch across all fisheries. Since this analysis only quantified kept river herring in the Atlantic herring fishery, it underestimates the total catch (kept and discarded) of river herring across all fishing fleets. Wigley *et al.* (2009) quantified river herring discards across fishing fleets that had sufficient observer coverage from July 2007–August 2008 with an estimated approximately 105,820 lbs (48 mt) discarded during the 12 months (July 2007 to August 2008); the estimated precision was low (149 percent CV). This analysis estimated only river herring discards (in contrast to total incidental catch), and noted that midwater trawl fleets generally retained river herring while otter trawls typically discarded river herring.

Lessard and Bryan (2011) estimated an average incidental catch of river herring and American shad of 3.3 million lbs (1,498 mt)/yr from 2000–2008. Lessard and Bryan (2011) analyzed NEFOP data at the haul level; however, the sampling unit for the NEFOP database is at the trip level. Within each gear and region, all data, including those from high volume fisheries, appeared to be aggregated across years from 2000 through 2008. However, substantial changes in NEFOP sampling methodology for high volume fisheries were implemented in 2005, limiting the interpretability of estimates from these fleets in prior years. The total number of tows from the fishing vessel trip report (VTR) database was used as the raising factor to estimate total incidental catch. The use of effort without standardization makes the implicit assumption that effort is constant across all tows within a gear type, potentially resulting in a biased effort metric. In contrast, the total kept weight of all species is used as the raising factor in standardized bycatch reporting methodology (SBRM). SBRM is a methodology to assess the amount and type of bycatch in a fishery. When quantifying incidental catch across multiple fleets, total kept weight of all species is an appropriate surrogate for effective fishing power because it is likely that no trips will exhibit the same attributes. Lessard and Bryan (2011) also did not provide precision estimates, which are imperative for estimation of incidental catch.

The stock assessment update (ASMFC 2017a, b) presents the total incidental catch of river herring updated through 2015 following methods described in the benchmark assessment. These methods were developed during Amendment 14 to the Atlantic Mackerel, Squid and Butterfish (MSB) Fishery Management Plan, which includes measures to address incidental catch of river herring and shads (ASMFC 2017a). The stock assessment update presents the total incidental catch estimates by species.

From 2005 to 2015, the total annual incidental catch of alewife ranged from 36.5–531.7 m (80,469–1,172,198 lbs) in New England and 10.9–295.0 mt (24,030–650,364 lbs) in the Mid-Atlantic region (ASMFC 2017a). The dominant gear varied across years between paired midwater trawls and bottom trawls (ASMFC 2017a). Corresponding estimates of precision exhibited substantial inter-annual variation and ranged from 0–10.6 across gears and regions. Between 2005 and 2015, total annual blueback herring incidental catch ranged from 8.2–186.6 mt

(18,078–411,383 lbs) in New England and 1.4–388.3 mt (3,086–856,055 lbs) in the Mid-Atlantic region (ASMFC 2017a). Across years, paired and single midwater trawls exhibited the greatest blueback herring incidental catches (ASMFC 2017a). Corresponding precision estimates ranged from 0–3.6.

The temporal distribution of incidental catch was summarized by quarter and fishing region for the most recent 10-year period (2005 to 2015). River herring catches occurred primarily in midwater trawls (62 percent, of which 48 percent were from paired midwater trawls and the rest from single midwater trawls), followed by small mesh bottom trawls (24 percent). Catches of river herring in gillnets were negligible. Across gear types, catches of river herring were greater in New England (56 percent) than in the Mid-Atlantic (37 percent). The percentages of midwater trawl catches of river herring were similar between New England (31.3 percent) and the Mid-Atlantic region (30.5 percent). However, catches in New England small mesh bottom trawls were almost three times higher (27 percent) than those from the Mid-Atlantic (10 percent). Overall, the highest quarterly catches of river herring occurred in midwater trawls during Quarter 1 in the Mid-Atlantic (28 percent), followed by catches in New England during Quarter 4 (12 percent) (ASMFC 2017). Quarterly catches in small mesh bottom trawls were highest in New England during Quarter 1 (9 percent) and totaled 5 to 7 percent during each of the other three quarters (ASMFC 2017a). The New England and Mid-Atlantic Fishery Management Councils have adopted measures for the Atlantic herring and mackerel fisheries intended to decrease incidental catch and bycatch of alewife and blueback herring.

Partitioning incidental bycatch in U.S. waters to river of origin or proposed stock complex is an ongoing area of research. Using the 15 microsatellites previously identified (Palkovacs *et al.* 2014), Hasselman *et al.* (2016) applied genetic stock identification (GSI) to determine potential regional stock composition of river herring bycatch from the New England Atlantic herring fishery (2012–2013). GSI is a biological tool to determine the composition of mixed stocks and the origin of individual fish. Results showed assignment of over 70 percent to the Aw-Southern New England stock complex for alewife and 78 percent assignment to the Bb-Mid-Atlantic stock complex for blueback herring. The study also gives a marine spatial snapshot of stock complexes in the NOAA statistical areas sampled during 2012–2013, though the authors noted extreme inter-annual variability in both the magnitude and composition of incidental catch, demonstrating that marine distributions for both species are highly dynamic from year to year.

Retained and discarded incidental catch (including slippage) is likely negatively affecting some river herring populations. Slippage was defined as catch that is discarded prior to it being brought aboard a vessel and/or prior to making it available for sampling and inspection by a NOAA-approved observer. The SRT noted that historical declines in river herring abundance were not likely driven by incidental catch, but because of current depleted abundances, incidental catch may impede population growth. As with all of the threats, the true magnitude of incidental catch remains largely unknown because there is no estimate of rangewide abundance. While some monitoring of incidental catch does occur in the Atlantic herring and mackerel fisheries, it has been estimated that monitored fisheries may only constitute half the discards in a given year (Wigley 2009). Further, the contribution of slippage also remains unknown because it is not currently reported.

Alewife

Based on the best available information, noted above, the SRT concluded that the threat from incidental catch corresponded to a *medium* (2.5) contribution to extinction risk to alewife rangewide and in the Aw-Canada DPS (2.7), the Aw-Northern New England DPS (2.4), the Aw-Southern New England DPS (2.7), and the Aw-Mid-Atlantic DPS (2.5). However, the SRT noted the highest uncertainty around the contribution of incidental catch to extinction (expressed in variability and range of scores; see NMFS 2019), due to uncertainties around the estimates of exploitation, future monitoring coverage, and future use of bycatch avoidance programs.

Incidental catch data available from the herring and mackerel fisheries for the years 2012–2015 (Palkovacs, unpublished) showed large proportions of Aw-Mid-Atlantic and Aw-Southern New England alewife captured by mid-water trawl and small mesh bottom trawl in the Atlantic herring/mackerel fisheries compared to other DPSs. Aw-Northern New England alewife made up a minimal amount of indirect catch (Palkovacs, unpublished). Much of the incidental catch from these fisheries was concentrated around Block Island Sound, which is located closest to the Aw-Mid-Atlantic DPS. SRT members noted that the results presented by Palkovacs are representative of the bycatch samples in the Atlantic herring and mackerel fisheries, which are concentrated generally in the Mid-Atlantic and Northeast.

Hasselman *et al.* (2016) estimated that incidental catch from rivers south of the Hudson River ranged from 400,000 in 2012 to 1.3 million in 2013. However, these previous estimates assumed that the Hudson River grouped with the Aw-Southern New England DPS, rather than the Aw-Mid-Atlantic DPS, where it is now grouped. Therefore, if the analysis were rerun with the new boundaries, the estimates of incidental catch would be greater for this DPS. The study did not collect samples from other small-mesh coastal fisheries in this DPS, which may also catch alewife.

Blueback Herring

Based on the best available information, as noted above, the SRT concluded that the threat from incidental catch rangewide (2.4) and for the Bb-Southern Atlantic DPS (1.7) corresponded to a *low* ranking. The mean score for the Bb-Canada/Northern New England DPS and the Bb-Mid-Atlantic DPS corresponded to *medium* (2.6 for each). Again, the SRT noted uncertainty in assessing incidental catch because of the uncertainty in estimating exploitation, future monitoring coverage, and future use of bycatch avoidance programs.

Limited information is available to estimate the impacts of incidental catch in the Bb-Canada/Northern New England DPS. Though fewer fish from this Bb-Canada/Northern New England DPS are reported in the Atlantic herring/mackerel fisheries (Palkovacs, unpublished data), other small mesh fisheries in this region may incidentally catch river herring.

Data available from the herring and mackerel fisheries for the years 2012–2015 (Palkovacs, unpublished) suggest that blueback herring from the Bb-Mid-Atlantic DPS are also caught as bycatch in the Atlantic herring fishery. SRT members noted uncertainty due to limited information regarding the magnitude of small mesh coastal fisheries. Additional uncertainty comes from the limited sample area (Atlantic Herring Management Area 2 fisheries). Numerous small mesh fisheries exist in Atlantic Herring Management Areas 1 and 2, and new information regarding bycatch in those fisheries would be very beneficial to understanding the level of impact on river herring populations in this DPS.

Recreational Harvest

Section 4.2.3 of the Status Review Report provides a state-by-state summary of recreational landing information for river herring. Recreational fishing in Canada for river herring is limited by regulations providing for area, gear, and seasonal closures, and limits on the number of fish that can be harvested per day. However, information on recreational catch is limited. Licenses and reporting are not required by Canadian regulations for recreational fisheries, and harvest is not well documented.

Alewife

The SRT noted recreational harvest has largely been eliminated in the U.S. range, and where it does exist, it is well regulated. Amendment 2 to the ASMFC Shad and River Herring Interstate Fishery Management Plan requires states to have a sustainable fishery management plan for each river with a river herring fishery (beginning in 2012). Plans must be reviewed by the ASMFC Shad and River Herring technical committee for adequate sustainability measures and must be approved by the ASMFC management board (see *Directed Commercial Harvest* above). Historical rangewide recreational catch is largely unknown, and the recent ASMFC assessment (2017a) deemed recreational catch estimates unreliable.

Based on the best available information, the SRT concluded that the threat from recreational harvest corresponded to a *low* (1.5) contribution to extinction risk rangewide and in all DPSs (1.3–2.1). However, the SRT noted that illegal and unmonitored recreational harvest could have significant local impacts for individual rivers with extremely low abundance. The SRT also noted higher uncertainty in the Aw-Canada DPS in comparison to the rangewide score due to uncertainty surrounding monitoring and reporting of recreational fisheries in Canada.

Blueback Herring

For the same reasons stated above for alewife rangewide, the SRT concluded that the threat from recreational harvest corresponded to a *low* (1.5) contribution to extinction risk rangewide and in all DPSs (1.3–1.8) for blueback herring. However, as noted above, the SRT noted that illegal and unmonitored recreational harvest could have significant local impacts for individual rivers with extremely low abundance. The SRT noted increased uncertainty in the Bb-Canada/Northern New England DPS due to uncertainties surrounding monitoring and reporting of recreational fisheries in Canada.

Scientific Research and Educational Harvest

The states of Maine, New Hampshire, Massachusetts, and Rhode Island estimate run sizes using electronic counters or visual methods. In Massachusetts, various counting methods are used at the Holyoke Dam fish lift and fish ways on the Connecticut River. Young-of-the-Year (YOY) surveys are conducted through fixed seine surveys capturing YOY alewife and blueback herring generally during the summer and fall in Maine, Rhode Island, Connecticut, New York, New Jersey, Maryland, District of Columbia, Virginia, and North Carolina. Rhode Island conducts surveys for juvenile and adult river herring at large fixed seine stations. Virginia samples river herring using a multi-panel gill net survey and electroshocking surveys. Florida conducts electroshocking surveys to sample river herring. Maine, New Hampshire, Massachusetts, Rhode Island, Maryland, and North Carolina collect age data from both commercial and fisheries-independent sampling programs, and length-at-age data. All of these scientific monitoring efforts are believed to have minimal impacts on river herring populations.

As noted previously, there is insufficient information available on river herring in many areas. Research needs were recently identified in the ASMFC River Herring Stock Assessment Reports (ASMFC 2012, 2017); NMFS Stock Structure, Climate Change and Extinction Risk Workshop/Working Group Reports (NMFS a, b, c 2012) and associated peer reviews; and New England and Mid-Atlantic Fishery Management Council documents (NEFMC 2012, MAFMC 2012).

Alewife and Blueback Herring Rangewide and All DPSs

There is little information linking scientific and educational use to declines in alewife or blueback herring populations. Therefore, based on the best available information, the SRT concluded that neither scientific use nor educational use is contributing to the species' risk of extinction. Both threats ranked in the *very low* (1.0) category.

C. Disease or Predation

The SRT (section 4.3.2) assessed the available information on disease and predation of alewife and blueback herring summarized in the Status Review Report (NMFS 2019).

Disease

Little information exists on diseases that may affect river herring; however, there are reports of a variety of parasites that have been found in both alewife and blueback herring. The most comprehensive report is that of Landry *et al.* (1992) in which 13 species of parasites were identified in blueback herring and 12 species in alewives from the Miramichi River, New Brunswick, Canada. The parasites found included one monogenetic trematode, four digenetic trematodes, one cestode, three nematodes, one acanthocephalan, one annelid, one copepod and one mollusk. The same species were found in both alewife and blueback herring with the exception of the acanthocephalan, which was absent from alewives.

In other studies, Sherburne (1977) reported piscine erythrocytic necrosis (PEN) in the blood of 56 percent of pre-spawning and 10 percent of post-spawning alewives in Maine coastal streams. PEN was not found in juvenile alewives from the same locations. Coccidian parasites were found in the livers of alewives and other finfish off the coast of Nova Scotia (Morrison and Marryatt 1990). Marcogliese and Compagna (1999) reported that most fish species, including alewife, in the St. Lawrence River become infected with trematode metacercariae during the first years of life. Examination of Great Lakes fishes in Canadian waters showed larval *Diplostomum* (trematode) commonly in the eyes of alewife in Lake Superior (Dechtiar and Lawrie 1988) and Lake Ontario (Dechtiar and Christie, 1988), though intensity of infections was low (<9/host).

Heavy infections of *Saprolegnia,* a fresh and brackish water fungus, were found in 25 percent of Lake Superior alewife examined, and light infections were found in 33 percent of Lake Ontario alewife (Dechtiar and Lawrie 1988). Larval acanthocephala were also found in the guts of alewife from both lakes. *Saprolegnia* typically is a secondary infection, invading open sores and wounds, and eggs in poor environmental conditions, but under the right conditions, it can become a primary pathogen. *Saprolegnia* infections usually are lethal to the host.

More recently, alewives were found positive for Cryptosporidium for the first time on record by Ziegler *et al.* (2007). Mycobacteria, which can result in ulcers, emaciation, and sometimes death, have been found in many Chesapeake Bay fish, including blueback herring (Stine *et al.* 2010). Lovy and Friend (2015) characterized two intestinal coccidians, *Goussia*

ameliae and G. *alosii* in alewives of the Maurice River, New Jersey. *G. ameliae* infected both landlocked and anadromous alewives. The parasites were prevalent in both juveniles and adult fish. While significant mortality seemed not to occur, researchers suggest that the energetic costs of these parasites should be considered when estimating impacts of climate change and habitat loss.

Another parasite recently discovered in New Jersey, *Myxobolus mauriensis,* attacks the ribs of juvenile river herring and can spread to other tissues (Lovy and Hutcheson 2016). This new species of *Myxobolus* was found mostly in the Maurice River (20 percent), but was also present in two other New Jersey river systems.

Alewife and Blueback Herring Rangewide and all DPSs

The overall mean score for disease corresponded to a *low* (alewife 1.5, blueback 1.7) ranking rangewide and in all DPSs for both alewife and blueback herring. The SRT could find little information linking disease to declines in alewife and blueback herring populations in any specific areas of the range. SRT members noted disease is of biggest concern at low population levels; however, warmer summer temperatures, changing fish communities, and changing migratory patterns due to climate change may make alewife and blueback herring populations more susceptible to disease in the future.

Predation

While alewife and blueback herring are an important forage species, predators on the Northeast U.S. shelf are generally opportunistic (versus specialized) and will consume prey species in relation to their abundance in the environment. At high population levels, predation is likely not an issue; however, as populations decline predation can become a larger threat, especially locally. Recent papers focus on the predation impacts of striped bass; however, the predatory impact by striped bass is likely localized to areas and times of overlap (Davis *et al.* 2012, Ferry and Mather 2012, Overton *et al.* 2008).

Two recent papers with contradictory conclusions discussed striped bass predation on river herring in Massachusetts and Connecticut estuaries and rivers, showing temporal and spatial patterns in predation (Davis *et al.* 2012; Ferry and Mather 2012). Davis *et al.* (2012) estimated that approximately 400,000 blueback herring are consumed annually by striped bass in the Connecticut River spring migration. In this study, striped bass were found in the rivers during the spring spawning migrations of blueback herring and had generally left the system by mid-June (Davis *et al.* 2012). Ferry and Mather (2012) discuss the results of a study conducted in Massachusetts watersheds with drastically different findings for striped bass predation. Striped bass were collected and stomach contents analyzed during three seasons from May through October (Ferry and Mather, 2012). The stomach contents of striped bass from the survey were examined and less than 5 percent of the clupeid category (from 12 categories identified to summarize prey) consisted of anadromous alosines (Ferry and Mather 2012). Overall, the Ferry and Mather (2012) study observed few anadromous alosines in the striped bass stomach contents during the study period. The contradictory findings of these two 2012 studies echo the findings of previous studies showing a wide variation in predation by striped bass with spatial and temporal effects.

The diets of other predators, including other fish (*e.g.,* bluefish, spiny dogfish), along with marine mammals (*e.g.,* seals) and birds (*e.g.,* double-crested cormorant), have not been quantified as extensively, making it more difficult to assess the importance of river herring in both the freshwater and marine food webs. As a result, some models found a significant negative effect from predation (Hartman 2003, Heimbuch 2008), while other studies did not find an effect (Tuomikoski *et al.* 2008, Dalton *et al.* 2009).

In addition to predators native to the Atlantic coast, river herring are vulnerable to invasive species such as the blue catfish (*Ictalurus furcatus*) and the flathead catfish (*Pylodictis olivaris*). These catfish are large, opportunistic predators native to the Mississippi River drainage system that were introduced into rivers on the Atlantic coast. They consume a wide range of species, including alosines, and ecological modeling on flathead catfish suggests they may have a large impact on their prey species (Pine 2003, Schloesser *et al.* 2011). In August 2011, ASMFC approved a resolution calling for efforts to reduce the population size and ecological impacts of invasive species, and named blue and flathead catfish as species of concern due to their increasing abundance and potential impacts on native anadromous species. Non-native species are a particular concern because of the lack of native predators, parasites, and competitors to keep their populations in check.

Alewife and Blueback Herring Rangewide and All DPSs

While alewife and blueback herring are important forage species, predators on the Northeast U.S. shelf are generally opportunistic (versus specialized) and will consume prey species in relation to their abundance in the environment. At high population levels, predation is likely not an issue; however, as populations decline, predation can become a larger threat, especially locally. Recent papers focus on the predation impacts of striped bass; however, the predatory impact by striped bass is likely localized to areas/times of overlap (Davis *et al.* 2012, Ferry and Mather 2012, Overton *et al.* 2008).

The overall mean score for predation corresponded to a *low* ranking for both species rangewide and in all DPSs. The SRT noted uncertainty surrounding introduced or invasive piscivores such as snakeheads or blue catfish, which could have larger impacts if they dramatically expand their ranges. Alterations to fish behavior were also noted as components of predation that have not been well described in the literature to date. For example, little is known about how increased predator abundance (including an abundance of introduced predators) may influence anadromous fish species' ability to access fish passage. Additionally, the effects of predation can be highly localized, as noted in the striped bass predation examples provided above (Davis *et al.* 2012, Ferry and Mather 2012, Overton *et al.* 2008); therefore, while the SRT characterized the rangewide and DPS threat risk as *low* (alewife 1.7–1.8, blueback herring 1.8–2.0), individual river populations may experience greatly increased threat levels.

D. Inadequacy of Existing Regulatory Mechanisms

The ESA requires an evaluation of existing regulatory mechanisms to determine whether they may be inadequate to address threats to river herring. Numerous Federal (U.S. and Canadian), state and provincial, tribal, and inter-jurisdictional laws, regulations, and agency activities regulate impacts to alewife and blueback herring as wide-ranging anadromous species. The status review SRT assessed the adequacy of regulatory mechanisms by examining regulations at three different governmental levels: international regulations, Federal regulations, and state regulations. Section 4.4 of the Status Review Report provides a summary of how these regulatory mechanisms—international

regulations, Federal regulations, and state regulations—may provide protections for river herring populations (NMFS 2019).

International Regulations

The Canadian Department of Fisheries and Oceans (DFO) manages alewife and blueback herring fisheries that occur in the rivers of the Canadian Maritimes under the Fisheries Act (R.S.C., 1985, c. F–14). The Maritime Provinces Fishery Regulations include requirements when fishing for or catching and retaining river herring in recreational and commercial fisheries (DFO, 2006; *http://laws-lois.justice.gc.ca*).

Commercial and recreational river herring fisheries in the Canadian Maritimes are regulated by license, fishing gear, season, and/or other measures (DFO 2001). Since 1993, DFO has issued few new licenses for river herring (DFO 2001). River herring are harvested by various gear types (*e.g.,* gillnet, dip nets, trap), and the regulations depend upon the river and associated location (DFO 2001). The primary management measures are weekly closed periods and limitations on the total number of licenses (DFO 2001). Logbooks are issued to commercial anglers in some areas as a condition of the license, and pilot programs are being considered in other areas (DFO 2001). The management objective is to maintain harvest near long-term mean levels when no specific biological and fisheries information is available (DFO 2001).

DFO stated that additional management measures may be required if increased effort occurs in response to stock conditions or favorable markets, and noted that fishery exploitation rates have been above reference levels, while fewer licenses are fished than have been issued (DFO 2001). In 2001, DFO reported that in some rivers river herring were being harvested at or above reference levels (*e.g.,* Miramichi), while in other rivers river herring were being harvested at or below the reference point (*e.g.,* St. John River at Mactaquac Dam). The DFO (2001) believed precautionary management involving no increase or decrease in exploitation was important for Maritime river herring fisheries, given that biological and harvest data were not widely available. DFO (2001) added that river-specific management plans based on stock assessments should be prioritized over general management initiatives.

Eastern New Brunswick appeared to be the only area in the Canadian Maritimes with a river herring integrated fishery management plan (DFO 2012). The DFO used Integrated Fisheries Management Plans (IFMPs) to guide the conservation and sustainable use of marine resources (DFO 2010). An IFMP managed a fishery in a given region by combining the best available science on the species with industry data on capacity and methods for harvesting (DFO 2010). The 6-year management plan (2007–2012) for river herring for Eastern New Brunswick was implemented in conjunction with annual updates to specific fishery management measures (*e.g.,* seasons). It is unclear if this management plan has been updated or discontinued.

Alewife and Blueback Herring Rangewide and All DPSs

The inadequacy of regulatory mechanisms to control the harvests of alewife and blueback herring was once considered a significant threat to their populations. The best available information indicates limited fishing is permitted in Canada, though uncertainties remain about the efficacy of international fishing regulations. The inadequacy of international regulations was ranked rangewide as *low* (alewife 2.1, blueback herring 2.0) contribution to extinction risk category. The threat was also ranked as *low* for the Aw-Northern New England (2.3), Aw-Southern New England (2.1), Aw-Mid Atlantic (2.0), Bb-Canada/Northern New England (2.3), and Bb-Mid Atlantic (2.0). SRT members ranked the threat of international regulations as a slightly higher risk with a *medium* ranking (2.7) within the Aw-Canada DPS. This DPS is located entirely within Canada; therefore, international regulations are predicted to directly affect this DPS more than the other DPSs. Canada does not routinely separate river herring species and less reported monitoring compared to the United States.

Federal Regulations

River herring stocks are managed under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act, 16 U.S.C 5101 *et seq.*), which states that, in the absence of an approved and implemented Fishery Management Plan (FMP) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA, 16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, *i.e.,* from 3 to 200 nautical mi (nm) (~5.6–370 km) offshore. The regulations must be: (1) Compatible with the effective implementation of an American Shad and River Herring Interstate Fisheries Management Program (ISFMP) by the ASMFC; and (2) consistent with the national standards set forth in section 301 of the MSA.

The MSA is the primary law governing marine fisheries management in Federal waters. The MSA was first enacted in 1976 and amended in 1996 and 2007. Most notably, the MSA aided in the development of the domestic fishing industry by phasing out foreign fishing. To manage the fisheries and promote conservation, the MSA created eight regional fishery management councils. The 1996 amendment focused on rebuilding overfished fisheries, protecting essential fish habitat, and reducing bycatch. The 2007 amendment mandated the use of annual catch limits and accountability measures to end overfishing, provided for widespread market-based fishery management through limited access privilege programs, and called for increased international cooperation.

The MSA requires that Federal FMPs contain conservation and management measures that are consistent with the ten National Standards. National Standard 9 states that conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The MSA defines bycatch as fish that are harvested in a fishery, but which are not sold or kept for personal use. This includes economic discards and regulatory discards. Alewife and blueback herring are encountered as both bycatch and incidental catch in Federal fisheries. While there is no directed fishery for alewife or blueback herring in Federal waters, they co-occur with other species that have directed fisheries (Atlantic mackerel, Atlantic herring, whiting) and are either discarded or retained in those fisheries.

Commercial fisheries that incidentally catch river herring in Federal waters are managed by the New England Fisheries Management Council (NEFMC), the Mid-Atlantic Fishery Management Council (MAFMC), and NMFS. Several management measures intended to reduce commercial fisheries interactions with river herring and shad in Federal waters are currently in place. These management measures have been developed by the NEFMC, the MAFMC, the Greater Atlantic Regional Fisheries Office, and the Northeast Fisheries Science Center (NEFSC) and promulgated through Federal fishery management plans (FMP) for Atlantic Herring and Atlantic Mackerel, Squid, and Butterfish.

The types of management measures currently in place or being considered

fall into several general categories: Limitations on total river herring and shad catch; improvements to at-sea sampling by fisheries observers; river herring avoidance program; increased monitoring of the Atlantic herring fishery; and including river herring in a Federal FMP.

Vessels fishing for Atlantic mackerel and Atlantic herring can encounter river herring and shad. The MAFMC and NEFMC recommended river herring and shad catch caps for these fisheries, and NMFS implemented catch caps for these fisheries beginning in 2014 to minimize bycatch and incidental catch. Managers do not currently have enough data to determine biologically based river herring and shad catch caps or to assess the potential effects of such catch caps on river herring and shad populations coastwide. However, the Councils and NMFS find that river herring and shad catch caps provide a strong incentive for the mackerel and herring fleets to continue avoiding river herring and shad. These catch caps are intended to allow for the full harvest of the mackerel and herring annual catch limits while reducing river herring and shad incidental catch and bycatch.

In December 2014, NMFS implemented river herring and shad catch caps for the Atlantic herring fishery for 2014–2015, and allowed the NEFMC to set river herring and shad catch caps and associated measures in future years though specifications or frameworks, as appropriate (79 FR 71960, December 4, 2014). Catch of river herring and shad on fishing trips that landed more than 6,600 lbs (3 mt) of Atlantic herring counted towards the caps. Caps were area- and gear-specific. Upon a NMFS determination that 95 percent of a river herring and shad cap has been harvested, a 2,000-lb Atlantic herring possession limit for that area and gear would become effective for the remainder of the fishing year. This possession limit has been imposed twice due to achieving the river herring and shad catch caps (both for midwater trawl vessels in 2018) since the catch caps were implemented in 2014. The river herring and shad catch caps for the Atlantic herring fishery for 2019 (set in the 2019 Adjustment to the Atlantic Herring Specifications; 84 FR 2760, February 8, 2019) are as follows:

A midwater trawl cap for the Gulf of Maine Catch Cap Area (76.7 mt) (169,094 lbs);

A midwater trawl cap for Cape Cod Catch Cap Area (32.4 mt) (71,430 lbs);

A midwater trawl cap for Southern New England Mid-Atlantic Catch Cap Area (129.6 mt) (285,719 lbs); and

A bottom trawl cap for Southern New England Catch Cap Area (122.3 mt) (269,625 lbs).

The river herring and shad catch cap for the mackerel fishery is set through annual specifications. NMFS set the 2018 river herring and shad cap for the mackerel fishery at 82 mt (180,779 lbs) as part of a final rule to implement the 2016 through 2018 Atlantic mackerel specifications (81 FR 24504, April 4, 2016). The 2018 Atlantic mackerel specifications, including the river herring and shad catch cap, apply to 2019 until Framework 13 to the Atlantic mackerel, squid, and butterfish FMP is finalized (84 FR 26634, June 7, 2019). Catch of river herring and shad on fishing trips that land greater than 20,000 lbs of mackerel count towards the cap. If NMFS determines that 95 percent of the river herring and shad cap has been harvested, a 20,000-lb mackerel possession limit will become effective for the remainder of the fishing year. In 2019, the river herring and shad cap was met in March, and the Atlantic mackerel possession limit was reduced starting on March 12, 2019 (84 FR 8999; March 13, 2019). The 2019 river herring and shad catch cap will be adjusted in the final rule implementing Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. Framework 13 proposes an initial 89-mt (196,211 lbs) catch cap. The cap could be increased to 129 mt (284,396 lbs) if commercial mackerel landings exceed 10,000 mt (22,046,200 lbs). The increased cap reflects a proportional increase to the proposed increase in the Atlantic mackerel commercial landings limit. Framework 13 will be in place by fall of 2019.

Under the MSA, there is a requirement to describe and identify Essential Fish Habitat (EFH) in each Federal FMP. EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The rules promulgated by the NMFS in 1997 and 2002 further clarify EFH with the following definitions: (1) Waters—aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; (2) substrate—sediment, hard bottom, structures underlying the waters, and associated biological communities; (3) necessary—the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and (4) spawning, breeding, feeding, or growth to maturity—stages representing a species' full life cycle (62 FR 19723; April 23, 1997 and 67 FR 2343; January 17, 2002).

EFH has not been designated for alewife or blueback herring, though EFH has been designated for numerous other species in the Northwest Atlantic. Measures to improve habitats and reduce impacts resulting from those EFH designations may benefit river herring either directly or indirectly. Conservation measures implemented in response to the designation of Atlantic salmon EFH and Atlantic herring EFH likely provide the most conservation benefit to river herring over any other EFH designation. Habitat features used for spawning, breeding, feeding, growth, and maturity by these two species encompasses many of the habitat features necessary for river herring throughout their life history. The geographic range in which river herring may benefit from the designation of Atlantic salmon EFH extends from Connecticut to the Maine/Canada border. The geographic range in which river herring may benefit from the designation of Atlantic herring EFH designation extends from the Maine/Canada border to Cape Hatteras.

The Atlantic salmon EFH includes most freshwater, estuary and bay habitats historically accessible to Atlantic salmon from Connecticut to the Maine/Canada border (NEFMC 2006). Many of the estuary, bay and freshwater habitats within the current and historical range of Atlantic salmon incorporate habitats used by river herring for spawning, migration, and juvenile rearing. Among Atlantic herring EFHs are the pelagic waters in the Gulf of Maine, Georges Bank, Southern New England, and mid-Atlantic south to Cape Hatteras out to the offshore U.S. boundary of the EEZ (NEFMC 1998). These areas incorporate nearly all of the U.S. marine areas most frequently used by river herring for growth and maturity. Accordingly, conservation measures aimed at improving or minimizing impacts to habitats in these areas for the benefit of Atlantic salmon or Atlantic herring may provide similar benefits to river herring.

A number of other Federal laws provide habitat-related protections that may benefit river herring. Further information on the protections associated with these laws is summarized in section 4.4.2 of the Status Review Report (NMFS 2019).

Alewife and Blueback Herring Rangewide and All DPSs

The inadequacy of regulatory mechanisms to control the harvests of alewife and blueback herring was once considered a significant threat to their

populations. However, the best available information indicates an adequate regulatory framework now exists within ASMFC to effectively manage alewife and blueback herring directed harvest, and there are multiple forms of habitat-related regulatory protections for these fish. The SRT ranked Federal regulations in the *medium* category rangewide (2.6) and for most DPSs (2.7–2.8). The Aw-Canada DPS was ranked as *low* (2.3), because this DPS fell entirely within Canada where U.S. Federal regulations may have slightly less influence in comparison to other areas overlapping or within the United States.

SRT members noted that in the framework of inter-jurisdictional management, these fish may not receive as much protection as more commercially valuable species. The SRT noted uncertainty around future catch caps (catch caps are scheduled to be recalculated in 2019) monitoring coverage, and the use of bycatch avoidance programs.

The SRT also considered other Federal non-fishery regulations such as the Clean Water Act and the Federal Power Act. Despite current regulations, habitat alterations, such as dams and culverts, excess nutrient loading and sedimentation due to poor land use practices, dredging, and coastal development, continue to affect both marine and freshwater habitats, potentially limiting population growth. The SRT also noted that habitat improvements related to long-term regulatory processes, such as relicensing of hydropower facilities through the Federal Energy Regulatory Commission that may result in dam removal or fish passage facilities, would not be immediately realized.

In tandem with the predicted effects of climate change, such as increased precipitation and warming ocean temperatures, the importance of Federal regulations to alewife and blueback herring sustainability will likely increase in the future.

State Regulations

A historical review of state regulations was compiled and published in Volume I of the stock assessment (ASMFC 2012, 2017b); an excerpt has been added to section 4.4.3 of the Status Review Report, which provides an overview of state regulations that may provide protections to river herring (NMFS 2019).

Alewife and Blueback Herring Rangewide and All DPSs

SRT members noted that, as with Federal regulations, existing state regulations related to fisheries provide structure for protection of river herring through ASMFC. However, like Federal regulations (discussed above), state regulations related to habitat loss remain a large concern for the future of the species with the predicted effects of climate change, especially since spawning and nursery habitats are found in state waters.

The SRT expressed uncertainty about the effectiveness of state regulations related to the reliability of enforcement of existing state laws and concerns for non-fishing regulations that authorize modifications to coastal and riverine habitat in the face of increasing populations and coastal development. State regulations were ranked in the *medium* (alewife, 1.6–2.7; blueback herring 2.5–2.7) contribution to extinction risk category, with state regulations having the lowest impact on the Aw-Canada DPS (1.6).

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The Status Review identifies four different threats that may contribute to other natural or manmade factors affecting the alewife and blueback herring continued existence: artificial propagation/stocking, competition, hybrids, and landlocked populations.

Artificial Propagation

Genetics data have shown that stocking alewife and blueback herring within and out of basin in Maine has had an impact on the genetic groupings within Maine (McBride *et al.* 2014); however, the extent to which this poses a threat to river herring locally or coast-wide is unknown. Stocking river herring directly affects a specific river/watershed system for river herring in that it can result in passing fish above barriers into suitable and new spawning and rearing habitat and in expanding populations into other watersheds.

The alewife restoration program in Maine focuses primarily on stocking in Androscoggin and Kennebec watersheds. The highest number of stocked fish was 2,211,658 in 2009 in the Sebasticook River and 93,775 in 2008 in the Kennebec River. In 2017, the majority of fish were stocked in the Kennebec (150,121), Androscoggin (97,083), and Sebasticook (50,450) watersheds. An additional 23,784 adult fish were stocked into locations out of basin, using fish collected from the Androscoggin (16,584) or Kennebec (7,200) Rivers. The Union River fishery in Ellsworth, Maine, is sustained through the stocking of adult alewives above the hydropower dam at the head-of-tide. Fish passage is not currently required at this dam, but fish are transported around the dam to spawning habitat in two lakes. Since 2015, the annual adult stocking rate has been 315,000 fish. Adult river herring are trapped at commercial harvest sites below the dam and trucked to waters upstream of the dam. The highest number of stocked fish in the Union River was 1,238,790 in 1986. In the Penobscot River watershed, over 48,000 adult fish were stocked into lakes in 2012 using fish collected from the Kennebec (39,650) and Union Rivers (8,998).

In New Hampshire, from 1984 to 2015, approximately 55,600 adult river herring have been stocked in coastal rivers (Cocheco, Winnicut, Exeter, Lamprey, and Salmon Falls) (ASMFC 2017b). The transfers that occurred were either in-basin transfers to previously unoccupied habitat or out-of-basin transfers to help supplement spawning runs in rivers with lower return numbers. Fish were stocked from various rivers including the Connecticut, Cocheco, Lamprey, Kennebec, and Androscoggin Rivers.

The Massachusetts Division of Marine Fisheries (DMF) conducts a trap and transport-stocking program for alewife and blueback herring in Massachusetts. The three major objectives are to: (1) Maintain and enhance existing populations, (2) restore historically important populations and (3) create new populations where feasible. Stocking of gravid river herring where river access has been provided or improved is generally conducted for three or more consecutive years per system. Prior to the moratorium in 2012, the program transported between 30,000 and 50,000 fish per year into 10–15 different systems. Since the moratorium, a DMF stocking protocol was developed and implemented in 2013 that provided criteria for stocking decisions and a focus to allow remnant populations present at restoration sites to naturally recolonize habitat prior to the introduction of donor stock genetics. The protocol has reduced stocking activity, with most recent efforts occurring within drainage, moving fish upstream past multiple obstructions to the headwater-spawning habitat (ASMFC 2017b).

Rhode Island's Department of Environmental Management (DEM) conducts trap and transport utilizing out-of-state and in-state broodstock sources to supplement existing runs or restore extirpated systems where habitats have been restored. Gilbert Stuart River was Rhode Island's only broodstock source for river herring between 1966 and 1972, and today it is

still an important source. Nonquit River has not been utilized as a broodstock source, but was considered in 2001, prior to the drastic decrease in spawning stock size. Between 1990 and 1993, both Gilbert Stuart and Nonquit Rivers received supplemental stockings from the Agwam and Bourne rivers located in Massachusetts. Since 2001, it has become increasingly difficult to obtain available out-of-state and in-state broodstock sources, due to the declines in river herring run sizes. In 2015, the following locations were stocked: Kickemuit, Turner Reservoir, Woonsquatucket, Potowamut, and Watchaug with 1,000 fish each, and Pawtucket with 2,000 fish.

The Edenton National Fish Hatchery (NFH) in North Carolina and the Harrison Lake NFH in Virginia have propagated blueback herring for restoration purposes. Edenton NFH is currently rearing blueback herring for stocking in Indian Creek and Bennett's Creek in the Chowan River watershed in Virginia.

Alewife and Blueback Herring Rangewide and DPSs

Artificial propagation ranked as a *very low* threat to alewife and blueback rangewide (alewife, 1.2; blueback herring, 1.3) and in all DPSs (alewife, 1.2–1.3; blueback herring, 1.2), except for the Aw-Northern New England DPS (1.7) and Bb-Canada/Northern New England DPS (1.8) where artificial propagation was ranked as a *low* threat.

SRT members noted that artificial propagation/stocking has detrimental effects on river herring populations. First, hatchery efforts often take focus and importance away from on-the-ground issues with a fish and its habitat, which would be harmful in the long term. Second, artificial propagation would almost certainly lead to a significant loss of genetic diversity, which is already likely substantially lower than most times in the past.

The SRT ranked the threat of artificial propagation/stocking slightly higher in the alewife Aw-Northern New England DPS and the Bb-Canada/Northern New England DPS compared to the rangewide and other DPS' risk scores. As noted in the abundance discussion of the Extinction Risk Assessment within the Status Review Report (NMFS 2019), the persistence of many populations in Maine are reliant on active management strategies (*e.g.* truck and transport, fish lifts, fishway maintenance) rather than on volitional passage. Therefore, a change in management strategy, especially related to stocking/truck and transport would have dramatic impacts on these runs, and therefore raises uncertainty associated with this area. However, there is no information to suggest that these stocking efforts would be discontinued, as these efforts are economically and recreationally important to these areas. The intensive stocking in this region has likely reduced genetic variability in the U.S. portion of this DPS.

Competition

Intra- and inter-specific competition were considered as potential natural threats to alewife and blueback herring. The earlier spawning time of alewife may lead to differences from blueback herring in prey selection, given that these fish become more omnivorous with increasing size (Klauda *et al.* 1991a). This could lead to differences in prey selection given that juvenile alewife would achieve a greater age and size earlier than blueback herring. Juvenile American shad are reported to focus on different prey than blueback herring (Klauda *et al.* 1991b). However, Smith and Link (2010) found few differences between American shad and blueback herring diets across geographic areas and size categories; therefore, competition between these two species may be occurring. Cannibalism has been observed (rarely) in landlocked systems with alewife. Additionally, evidence of hybridization exists between alewife and blueback herring, but the implications of this are unknown. Competition for habitat or resources has not been documented with alewife/blueback herring hybrids, as there is little documentation of hybridization in published literature, but given the unknowns about their life history, it is possible that competition between non-hybrids and hybrids could be occurring.

Alewife and Blueback Herring Rangewide and All DPSs

Competition among fish species is difficult to determine because it requires demonstration of a limiting resource(s). Given the diet and generalist nature of alewife and blueback herring, prey are likely not limiting. However, there is some possibility that space could be limiting for these species (*e.g.* dams, poor fish passage, etc.). Competition ranking fell between *very low* to *low* rangewide and for all DPSs (alewife, 1.4–1.5; blueback herring, 1.4–1.6).

Hybrids

Genetic studies indicate that interbreeding, or hybridization, between alewife and blueback herring may be occurring in some instances where populations overlap (see for example, NMFS 2012a). Though interbreeding among closely related species is relatively uncommon, it does occasionally occur (Levin 2002) and has been reported at rates of 1.8 to 2.4 percent (Hasselman *et al.* 2014, Hasselman *et al.* 2016). Most often, different reproductive strategies, home ranges, and habitat differences of closely related species prevent interbreeding or keep interbreeding at very low levels. In circumstances where interbreeding does occur, natural selection often keeps hybrids in check because hybrids are typically less fit in terms of survival or their ability to breed successfully (Levin 2002). Other times, environmental conditions can provide an environment where hybrids can thrive. Though available evidence indicates that some alewife and blueback herring hybrids are found in the wild (Hasselman *et al.* 2014, Hasselman *et al.* 2016) there is not enough evidence to conclude whether or not hybridization poses a threat to one or both species of river herring.

Alewife and Blueback Herring Rangewide and All DPSs

Hybrids have likely been a natural occurrence throughout the history of alewife and blueback herring. In most cases, they occur at low to very low rates in natural and impacted systems (McBride *et al.* 2014, Hasselman *et al.* 2014). The SRT ranked hybrids in the *very low* category rangewide and for all DPSs (1.0–1.1).

Landlocked Populations

Alewives and blueback herring maintain two life history variants: anadromous and landlocked. It is thought that they diverged relatively recently (300 to 5,000 years ago) and are now discrete from each other. Landlocked alewife populations occur in many freshwater lakes and ponds from Canada to North Carolina as well as the Great Lakes (Rothschild 1966, Boaze and Lackey 1974). Landlocked blueback herring occur mostly in the southeastern United States and the Hudson River drainage. At this time, there is no substantive information that would suggest that landlocked populations can or would revert to an anadromous life history if they had the opportunity to do so.

The discrete life history and morphological differences between the two life history variants provide substantial evidence that upon becoming landlocked, landlocked herring populations become largely independent and separate from anadromous populations. Landlocked populations and anadromous populations occupy largely separate ecological niches, especially as related to their contribution to freshwater,

estuary and marine food webs (Palkovacs and Post 2008). Thus, the existence of landlocked life forms does not appear to pose a significant threat to the anadromous forms.

Alewife and Blueback Herring Rangewide and All DPSs

Landlocked populations are discrete from anadromous blueback herring, occupy different ecological niches, and have differing morphological features. The SRT ranked landlocked populations as a *very low* contribution to extinction risk rangewide and for all DPSs.

Overall Risk Summary

Guided by the results from the demographics risk analysis as well as threats assessment, the SRT members used their informed professional judgment to make an overall extinction risk determination for each species, now and in the foreseeable future. The SRT used a ''likelihood analysis'' to evaluate the overall risk of extinction. Each SRT member had 10 likelihood points to distribute among the following overall extinction risk categories: *low* risk, *moderate* risk, or *high* risk. These categories are described in Section 6.1.4 Overall Level of Extinction Risk Analysis of the Status Review Report (NMFS 2019). As noted earlier, the team was asked to review the demographic risks and threats to the species, and to consider and discuss how these threats, acting in combination, may increase risk to the species. For example, the SRT noted how climate variability may enhance sedimentation in river systems, increasing the threat associated with poor water quality, and how climate change effects may enhance the threat of water withdrawal in regions. The SRT noted higher uncertainty around how the combination of such threats may impact the two species, and this uncertainty is reflected in a wider range in their distribution of likelihood points for these threats (largely those associated with habitat-related threats). The SRT's uncertainty about how the demographic risks and the combination of threats may impact the species (or DPSs) is also reflected in a wider distribution of likelihood points for the overall risk to the species.

We have independently reviewed the best available scientific and commercial information, including the status review report (NMFS 2019), and other published and unpublished information reviewed by the SRT. As described earlier, an endangered species is ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species is one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We reviewed the results of the SRT and concurred with the SRT's findings regarding extinction risk. We then applied the statutory definitions of ''threatened species'' and ''endangered species'' to the SRT findings and other available information to determine if listing alewife or blueback herring rangewide or in any of their respective DPSs was warranted.

Alewife

The mean scores based on the SRT members' individual scores indicate that the level of extinction risk to the alewife rangewide is *low,* with 75 percent of the SRT members' likelihood points allocated to the *low* risk category. The SRT allocated 22 percent of their likelihood points to the *moderate* extinction risk category. The SRT allocated 3 percent of their likelihood points to the *high* extinction risk category. SRT members attributed the *high* extinction risk points to concerns associated with the species' complex anadromous fish life history, uncertainty in climate change and vulnerability, incidental catch, potential habitat modification (*e.g.* increased coastal development and water use), and concern about the adequacy of current and future regulatory mechanisms, including fisheries rangewide. As noted throughout the Extinction Risk Analysis section, the SRT expressed considerable uncertainty about the demographics risk to the species and the threats, with a majority of the mean scores for ranking threats falling between the *very low* (1) to *medium* (3) categories. Overall the SRT acknowledged that alewife are at historical low levels, but noted that improved fisheries management efforts in recent years have reduced fishing mortality rates in alewife stocks and that hundreds of habitat improvement projects have been completed in the past 20 years. Many relatively robust populations of alewife exist, and genetic data show connectivity among populations (genetic continuum along the coastline) despite regional groupings.

Given this level of extinction risk, which is based on an evaluation of the contribution of alewife's demographic parameters and threats to extinction risk, we have determined that the alewife rangewide does not meet the definition of an endangered or threatened species and, as such, listing under the ESA is not warranted at this time.

SRT members also applied the same likelihood point method to each alewife DPS. The mean overall risk scores for alewife in the Aw-Canada DPS correspond to a 77 percent likelihood of a *low* risk and 23 percent *moderate* risk of extinction. The mean overall risk scores for alewife in the Aw-Northern New England DPS correspond to a 74 percent likelihood of a *low* risk and 26 percent *moderate* risk of extinction. The mean overall risk scores for alewife in the Aw-Southern New England DPS correspond to a 69 percent likelihood of a *low* risk and 31 percent *moderate* risk of extinction. The mean overall risk scores for alewife in the Aw-Mid-Atlantic DPS correspond to a 70 percent likelihood of a *low* risk and 30 percent *moderate* risk of extinction.

Given this level of extinction risk for all alewife DPSs, which is based on an evaluation of the contribution of demographic parameters and threats to extinction risk, we have determined that the Canada, Aw-Northern New England, Aw-Southern New England and Aw-Mid-Atlantic DPSs do not meet the definition of an endangered or threatened species and, as such, listing under the ESA is not warranted at this time.

Blueback Herring

For blueback herring rangewide, SRT members indicated that there was a 66 percent *low* risk of extinction, a 30 percent *moderate* risk of extinction, and a 4 percent *high* risk of extinction. SRT members attributed the *high* extinction points to concerns associated with the complex anadromous fish life history, uncertainty in climate change and vulnerability, incidental catch, potential habitat modification (*e.g.* increased coastal development and water use), and concern about the adequacy of current and future regulatory mechanisms, including fisheries rangewide. As noted throughout the Extinction Risk Analysis section, the SRT expressed considerable uncertainty about the demographics risk to the species and the threats, with a majority of the mean scores for ranking threats falling between the *very low* (1) to *medium* (3) categories. The SRT noted blueback herring have been subjected to habitat impacts for centuries and to considerable fishing pressure for many decades. The SRT also acknowledged that blueback herring are at historically low levels, but noted that improved fisheries management efforts in recent years have reduced fishing mortality rates for blueback herring stocks and that hundreds of habitat improvement projects have been completed in the past 20 years. While over one third of

the SRT's allocation points were in the *moderate/high* categories, indicating that blueback herring are at a greater risk of extinction compared to alewives due to lower overall abundances, increased vulnerability to anthropogenic disturbances in combination with climate change, greater distances between populations, poorer performance at fishways, and uncertainties surrounding accurate distribution information rangewide, a majority of the points were still allocated to the *low* risk category based on resilient life history traits and current abundance information.

Given this level of extinction risk, which is based on an evaluation of the contribution of blueback herring's demographic parameters and threats to extinction risk, we have determined that the blueback herring rangewide does not meet the definition of an endangered or threatened species and, as such, listing under the ESA is not warranted at this time.

SRT members also applied the same likelihood point method to each blueback herring DPS. The mean overall risk scores for blueback herring in the Bb-Canada/Northern New England DPS correspond to a 67 percent *low* risk of extinction, a 30 percent *moderate* risk of extinction, and a 3 percent *high* risk of extinction. The mean overall risk scores for blueback herring in the Bb-Mid-Atlantic DPS correspond to a 69 percent *low* risk of extinction, a 30 percent *moderate* risk of extinction, and a 1 percent *high* risk of extinction. The mean overall risk scores for blueback herring in the Bb-Southern Atlantic DPS correspond to a 69 percent *low* risk of extinction, a 30 percent *moderate* risk of extinction, and a 1 percent *high* risk of extinction.

Given this level of extinction risk for all blueback herring DPSs, which is based on an evaluation of the contribution of blueback herring's demographic parameters and threats to extinction risk, we have determined that the Bb-Canada/Northern New England, Bb-Mid-Atlantic and Bb-Southern Atlantic DPSs do not meet the definition of an endangered or threatened species and, as such, listing under the ESA is not warranted at this time.

Significant Portion of Its Range

As the definitions of ''endangered species'' and ''threatened species'' make clear, the determination of extinction risk can be based on either assessment of the rangewide status of the species, or the status of the species in a ''significant portion of its range'' (SPR). Because the SRT determined that alewife and blueback herring are at a *low* risk of extinction rangewide and in each DPS, we asked the SRT to also consider whether a significant portion of the range may exist in either species and whether the species in those portions are in danger of extinction now or in the foreseeable future (79 FR 37578; July 1, 2014).

In 2014, the Services adopted a joint SPR Policy that outlines a step-wise analysis to be used to determine whether a portion of the range is ''significant.'' (79 FR 37578; July 1, 2014). The SRT followed the process outlined in the policy when it considered whether any portions of the ranges of alewife and blue back herring are significant.

Consistent with the policy, when we conduct an SPR analysis, we first identify any portions of the range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, as noted in the policy, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant or in which a species may not be endangered or threatened. To identify only those portions that warrant further consideration we consider whether there is substantial information indicating that (1) the portions may be significant, and (2) the species may be in danger of extinction in those portions or is likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range; rather, it is a step in determining whether a more detailed analysis of the issue is required (79 FR 37578; July 1, 2014). Making this preliminary determination triggers a need for further review, but does not prejudge whether the portion actually meets these standards such that the species should be listed.

If this preliminary determination identifies a particular portion or portions for potential listing, those portions are then fully evaluated under the ''significant portion of its range'' authority to determine whether the portion in question is biologically significant to the species *and* whether the species is endangered or threatened in that portion.

The SPR Policy further provides that, depending on the particular facts of each situation, we may find it is more efficient to address the significance issue first, but in other cases, it will make more sense to examine the status of the species in the potentially significant portions first. Whichever question is asked first, an affirmative answer is required to proceed to the second question. (79 FR 37587). If we determine that a portion of the range is not ''significant,'' we will not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we will not need to determine if that portion is ''significant.'' Thus, if the answer to the first question is negative—whether it addresses the significance question or the status question—then the analysis concludes, and listing is not warranted.

In making a determination of ''significance,'' we consider the contribution of the individuals in that portion to the viability of the species. The SPR Policy established a threshold for ''significance'' (*i.e.,* the portion's contribution to the viability is so important that, without the members in that portion, the species would be in danger of extinction or likely to become so in the foreseeable future). In two recent District Court cases challenging listing decisions made by the USFWS, the definition for ''significant'' in the SPR Policy was invalidated. The courts held that the threshold component of the definition was ''impermissible,'' because it set too high a standard. Specifically, the courts held that under the threshold in the policy, a species would never be listed based on the status of the portion, because in order for a portion to meet the threshold, the species would be threatened or endangered rangewide. *Center for Biological Diversity, et al.* v. *Jewell,* 248 F. Supp. 3d 946, 958 (D. Ariz. 2017); *Desert Survivors* v. *DOI* 321 F. Supp. 3d. 1011 (N.D. Cal., 2018). Accordingly, while the SRT used the threshold identified in the policy, which was effective at the time the SRT met, our analysis does not rely on the definition in the policy, but instead responds to the second *Desert Survivors* case (336 F. Supp. 3d 1131, 1134–1136; N.D. CA August, 2018), in which the Court stated that there is no geographic limitation to the holding that the definition of ''significant'' is impermissible. As such, our analysis independently construes and applies a biological significance standard, drawing from the record developed by the SRT with respect to viability characteristics (*i.e.,* abundance, productivity, spatial distribution, and genetic diversity) of the members of the portions, in determining if a portion is a significant portion of a species' range.

As described previously, based on abundance estimates in the recent stock assessment update (ASMFC 2017a) and the SRT's extinction risk results, the

SRT determined that alewife are at low risk of extinction rangewide and in each of the four DPSs. Applying the SPR Policy to the alewife, the SRT first evaluated whether there is substantial information indicating that any portions of the species' range are threatened or endangered. In light of the earlier findings that all four DPSs, which span the range of this species, are at low risk of extinction, and finding no other evidence of areas within the species range where there is a concentration of threats, the SRT did not identify portions of the alewife range that were at a *high* risk of extinction, nor could the SRT identify threats that significantly affected one portion of the range.

The SRT then applied the SPR Policy to each alewife DPS. In other words, the SRT evaluated whether there is substantial information indicating that any portions of any singular DPS may have a concentration of threats and should be further evaluated under the SPR Policy. After reviewing the best available data, the SRT found no information to suggest that any portion of the Aw-Canada, Aw-Northern New England, Aw-Southern New England, or Aw-Mid-Atlantic DPSs stood out as having a heightened risk of extinction now or in the foreseeable future, and the SRT found no reason to further evaluate areas of any particular DPS under the SPR Policy.

After reviewing the SRT's findings, we agree that there is no evidence to suggest that alewife are at heightened risk of extinction, now or in the foreseeable future, in any particular area rangewide or in a DPS. Thus, we find no evidence that a significant portion of this species or one the DPSs is threatened or endangered.

As discussed in the Assessment of Extinction Risk section previously, the SRT determined that rangewide blueback herring have a 66 percent low risk of extinction, a 30 percent *moderate* risk of extinction and a 4 percent *high* risk of extinction. Applying the SPR Policy to the blueback herring, the SRT first identified geographic areas where there may be a concentration of threats. The SRT then evaluated whether there is substantial information indicating that any of these portions of the species' range may be facing a risk of extinction now or in the foreseeable future.

The SRT specifically considered whether recent information about the Bb-Mid-Atlantic stock complex of blueback herring suggested this region of the range may constitute an SPR. The SRT considered threats to this region (see previous *Evaluation of Threats* section). While some threats were ranked slightly higher numerically in the Mid-Atlantic compared to other areas (including, but not limited to water quality and water withdrawal), the scoring varied from other areas only by tenths of a point. Accordingly, the identified qualitative rankings (*i.e., very low* to *medium*) always matched at least one or more other areas for the particular threat category. Additionally, the SRT completed an overall extinction risk assessment for the Bb-Mid-Atlantic portion of the range (see previous *Overall Risk Summary* section). The SRT allocated a 69 percent *low* risk of extinction, a 30 percent *moderate* risk of extinction and a 1 percent *high* risk of extinction. Overall, the best available data indicate blueback herring in the Bb-Mid-Atlantic stock complex are not at risk of extinction now or in the foreseeable future. Therefore, the SRT did not proceed to consider the biological significance of the Bb-Mid-Atlantic stock to the species.

Additionally, because in 2011 the petitioner identified the Long Island Sound portion of the range as a potential DPS, the SRT considered if this portion of the Bb-Southern New England stock complex would be considered ''significant'' under the SPR Policy. The petitioners considered this area to consist of the Monument, Namasket, Mattapoiset, Gilbert-Stuart, Shetucket, Farmington, Connecticut, Naugatuck and Mianus Rivers.

The SRT considered the threats affecting the Long Island Sound area, including habitat loss due to dams and other barriers, water withdrawal due to high population densities, and bycatch. Notably, this area is found within the Mid-Atlantic DPS (discussed above and reviewed in *Evaluation of Threats*), and much of the information that may differ in the Long Island portion of the range is expressed in the above descriptions with additional detail provided in the Status Review Report (NMFS 2019).

The SRT analyzed the available run data for the time series for the Long Island trawl survey, Connecticut juvenile seine survey, and Monument River run counts. Overall blueback herring abundance for this portion is difficult to estimate accurately and managers have reported a mismatch of river wide trend in abundance in this region when comparing juvenile seine survey data from the Connecticut River and Holyoke fishway counts (ASMFC 2017b). While the Connecticut River watershed may act or has acted as a source for blueback herring in this region, many other rivers in this portion of the range are smaller coastal runs that drain directly into the ocean and are not expected to be large production rivers for blueback herring on the same scale. Over the full time series (2006–2015) in the most recent ASMFC assessment, run trends for blueback herring have decreased in the Monument River, were variable in the Connecticut River, and were stable in the Shetucket River and Mianus Rivers (ASMFC 2017a).

When considering spatial distribution of blueback herring in this portion, the SRT noted that although the abundances are low, blueback herring were distributed through this entire portion and appear to be reasonably well connected with rivers to the south of the Connecticut and rivers to the north, which also have blueback herring populations. Recent genetic work by Reid *et al.* (2018) places river populations from this portion into at least two separate genetic groups. The Connecticut River and Mianus Rivers were assigned to the Mid Atlantic stock complex, and the Gilbert-Stuart and Monument Rivers were assigned to the Southern New England stock complex (Reid *et al.* 2018). The most recent genetic studies do not indicate that this portion is unique in its genetic diversity.

Finally, the SRT completed an overall extinction risk assessment for the Long Island portion identified by the petitioners. Overall, the SRT concluded that there is a *low* risk of extinction in the Long Island Sound portion currently and in the foreseeable future. The Long Island Sound population is not threatened or endangered, nor is it likely to become so in the foreseeable future. Therefore, the SRT did not proceed to consider whether the portion may be biologically significant to the species rangewide.

After reviewing the SRT's findings for the Bb-Mid-Atlantic stock and the Long Island Sound portion of the range, we agree that there is no evidence to suggest that blueback herring in these areas are at heightened risk of extinction. Thus, we find that the Mid-Atlantic stock and the Long Island Sound portion are not significant portions of the blueback herring range because they are not in danger of extinction or likely to become so in the foreseeable future.

Next, the SRT considered the extinction risk of blueback herring in the Bb-Mid-New England stock complex (see Figure 2) due to recent concerns related to very low run counts in New Hampshire rivers. The SRT considered the best available information on abundance, growth rates/productivity, spatial distribution, and diversity contained in the recent stock assessment update (ASMFC 2017a, b). The SRT examined trends for the Oyster,

Winnicut, Taylor, Lamprey, and Cocheco Rivers in New Hampshire and discussed threats in this region. For a more detailed description of population trends see the Status Review Report (NMFS 2019). The SRT questioned whether the fisheries-independent surveys that are currently conducted by the state adequately target blueback herring, but the reported indices in the most recent stock assessment (ASMFC 2017b) are the best available information. The best available data show low blueback herring run count estimates for rivers in this portion, and the SRT noted that recent sampling in the Lamprey River resulted in zero blueback herring counted at the fishway. SRT members noted that there is likely some blueback herring spawning below the fishway, but the monitoring design only counts fish which ascend the fishway. However, this issue is not unique to this river system.

The most recent genetic information classified blueback herring in this portion of the species' range as belonging to the Bb-Mid New England stock complex (Reid *et al.* 2018) (see Figure 2). The Bb-Mid New England portion is adjacent to stock complexes in the north (Bb-Canada/Northern New England) and south (Bb-Mid Atlantic), though the precise boundaries and distribution of this stock complex are not fully understood due to the unsampled blueback herring populations located between the Oyster River and the Sebasticook River.

The SRT considered the threats affecting the Bb-Mid New England area, including habitat loss due to dams and other barriers, threats to water quality, incidental catch, and inadequacies of state and Federal regulations. Notably, this area overlaps with the southern portion of the Aw-Northern New England (noted above and reviewed in *Evaluation of Threats*), and additional detail can be found in the Assessment of the ESA Section 4(a)(1) Factors of the Status Review Report, which reviews information for each threat along the coastline (NMFS 2019).

The SRT completed an overall extinction risk estimate for the Bb-Mid-New England stock complex of blueback herring and allocated 51 percent of the likelihood points to the *high* risk of extinction, 39 percent to *moderate* risk of extinction and 10 percent to low risk of extinction. The allocation of likelihood points in the *high* risk category was primarily due to declining run trends and poor population metrics.

Because the SRT found the Bb-Mid-New England stock complex of blueback herring to be at a *high* risk of extinction, they considered the questions outlined in the Status Review Guidance (NMFS 2017) to determine if the Bb-Mid-New England stock complex might be considered biologically ''significant'' *i.e.,* whether the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction or likely to become so in the foreseeable future. Specifically, the SRT considered a number of questions that inform the viability characteristics: Abundance, productivity, spatial distribution, and genetic diversity. The SRT considered how the loss of the portion, given the current available information on abundance levels, would affect the species rangewide in a variety of ways. The SRT also considered how the loss of the portion would affect the spatial distribution of the species (*i.e.,* would there be a loss of connectivity, would there be a loss of genetic diversity, or would there be an impact on the population growth rate of the remainder of the species).

The SRT found that the Bb-Mid-New England portion of blueback herring was unlikely to contribute in such a way as to be considered significant to the blueback herring rangewide. More specifically, the Bb-Mid-New England portion is very small compared to the rest of the range, spanning approximately 311 km (193 mi) of coastline and encompassing less than 3 percent of the estimated watershed area of the species (see Table 1). Additionally, the current run sizes in this portion in the last decade have numbered in the 10,000s and more recently in the 1,000's and are estimated at less than 1 percent of overall rangewide abundance. The historical contribution of the Mid-New England portion to the rangewide abundance is assumed to be a similar proportion, as historical declines were noted across the blueback herring's range. However, the historical contribution may have been slightly higher than one percent due to the intense current and historic industrial development (*e.g.,* dam construction near head of tide for mills) in this region (see *Evaluation of Threats*). Additional uncertainty exists as unsampled adjacent rivers may be attributed to this stock complex (see Figure 2). The SRT noted that due to the small abundance in the Bb-Mid-New England portion and its small contribution to the overall population size, they would not expect deleterious effects to the remainder of the species from its loss. The SRT also noted that the loss of the Bb-Mid-New England portion would not cause the species as a whole to be below replacement rate. Loss of the Bb-Mid-New England portion could potentially disrupt connectivity in the very short term. However, the SRT noted that straying rates would allow for recolonization of the rivers in the foreseeable future and therefore maintain overall spatial diversity. Populations from the north (Bb-Canada/Northern New England DPS) and south (Bb-Mid-Atlantic DPS) contain hundreds of thousands of blueback herring and would likely be the first recolonizers of this 311 km (193 mi) stretch of coastline.

If the Bb-Mid-New England portion was lost, blueback herring rangewide would lose one of five known regional stock complexes and potential genetic adaptation. However, four stock complexes would remain providing genetic diversity to the species as whole. Further, there is no evidence to indicate that the loss of genetic diversity from the Bb-Mid-New England stock complex would result in the remaining populations lacking enough genetic diversity to allow for adaptations to changing environmental conditions. In considering this portion of the range, the SRT was unaware of any particular habitat types that the species occupies that are found only in the Bb-Mid-New England portion (see *Distinct Population Segment,* significance discussion). In conclusion, the SRT determined that the Bb-Mid-New England stock is not a significant portion of the range because the loss of the members in the portion would not render the species in danger of extinction, nor make the species likely to become so in the foreseeable future.

In light of these recent court decisions noted above that invalidated the threshold for ''significant'' in the SPR Policy that the SRT applied, we have independently reviewed and have considered the biological importance or value that this stock complex provides to the conservation of the species rangewide to determine if this portion may be ''significant'' as contemplated by the ''significant portion of its range'' phrase in the ESA. The foundation of the policy of defining ''significant'' in terms of biological significance to the species has not been invalidated by any court, and we continue to rely on the principles of biological significance as the corner stone of this SPR analysis. Specifically, we consider how this portion contributes to the conservation of the species by analyzing the abundance, spatial distribution, genetic diversity and productivity of the members in the portion and the value these factors and other relevant factors

contribute to the conservation of the species overall.

Regarding abundance estimates from this stock complex, while exact numbers of individuals are not available, the current indices show that this stock complex likely has a low level of biological importance to the rangewide abundance estimates. Due to the small geographic size of the area that it inhabits, this stock contributes a small proportion of the overall geographic distribution of the blueback herring rangewide. Specifically, this stock does not have the population numbers or habitat capacity to buffer surrounding stocks against environmental threats such as droughts, or flooding. We found only low abundance, and we did not find unique threats to this stock complex.

We also examined spatial distribution and genetic diversity. This stock complex bridges connectivity between the Bb-Canada/Northern New England and Bb-Southern New England stock complexes by habitat between these two stocks. However, blueback herring have been observed to migrate this distance previously (*e.g.,* Eakin 2017), and the importance of this bridge between stock complexes is likely low given the species' straying behavior. Overall, we find that the contribution that this stock makes to spatial distribution of the species is low because it inhabits a small area compared to other stock complexes of this species and to the rangewide distribution.

According to the most recent genetic study (Reid *et al.* 2018), the Bb-Mid-New England stock complex represents one of five distinguishable groupings of genetic diversity for blueback herring. While it is likely that this unique genetic signature conveys some type of adaptive potential to the species rangewide, we do not currently have evidence of this. Because we do not know the adaptive potential of the genetic signature for the Bb-Mid-New England complex, we are not able to determine whether the genetic diversity contributes in a significant way to the persistence of the species rangewide. The available genetic research currently suggests that there is overlap in genetic signatures at the boundaries of all five stock complexes, such that we observe a coastwide continuum where each river is most similar to its nearest neighbors.

Summarizing our analysis, we find that the Bb-Mid-New England stock complex contributes a low level of importance to the species rangewide in terms of abundance, productivity, and spatial distribution. As one of five of the stock complexes, we find that the Bb-Mid-New England stock complex contributes genetic diversity to the species; however, the importance of that diversity is unclear because there is no evidence at this time indicating that the genetic differences between stocks are linked to adaptive traits. Further, genetic mixing at the boundaries of these stock complexes obscures the importance of each group with regard to the genetic diversity for the species as a whole. Overall, we find that the Bb-Mid-New England stock complex's contribution to the population in terms of abundance and spatial distribution is of low biological importance and overall does not appear significant to blueback herring as a whole. Thus, we find that the Mid-New England stock complex does not represent a significant portion of the blueback herring range.

In summary, we find that there is no portion of the blueback herring's range that is both significant to the species as a whole and endangered or threatened. Thus, we find no reason to list this species based on a significant portion of its range.

Protective Efforts

In the *Evaluation of Threats* section, we describe ongoing efforts that provide for the conservation of alewife and blueback herring either indirectly or directly (see, specifically, discussions under *A. Habitat Destruction, Modification, or Curtailment,* and *B. Overutilization*). In these sections we describe efforts to restore alewife and blueback herring habitat (*e.g.,* with connectivity projects such as dam removal and fish passage installation and improvements) and to manage threats associated with harvest. Protective efforts that are likely to be most effective in supporting the long-term growth of these species center on ensuring connectivity in spawning rivers. While hundreds of restoration projects have occurred over the last 20 years to improve access to alewife and blueback herring habitat across the range, these efforts often take many years to accomplish, and the likelihood of projects occurring (in the long term) are not easy to predict due to confounding factors associated with funding and political/community will. Further, once accomplished, the efforts may only have localized effects on independent rivers. While we have reviewed the states' efforts that may convey protections for these species into the future, we do not find that these future efforts are certain to significantly alter the extinction risk for alewife or blueback herring.

Final Determination

Section 4(b)(1) of the ESA requires that listing determinations be based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have independently reviewed the best available scientific and commercial information, including information provided in the petition, information submitted in response to the request for comments (82 FR 38672; August 15, 2017), the status review report (NMFS 2019), and other published and unpublished information cited herein, and we have consulted with species experts and individuals familiar with the alewife and blueback herring. We identified four DPSs of the alewife and three DPSs of the blueback herring. We considered each of the section 4(a)(1) factors to determine whether any one of the factors contributed significantly to the extinction risk of the species. We also considered the combination of those factors to determine whether they collectively contributed significantly to extinction risk. As previously explained, we could not identify any portion of the species' range that met both criteria of the SPR Policy. Therefore, our determination set forth below is based on a synthesis and integration of the foregoing information, factors and considerations, and their effects on the status of the species throughout their ranges and within each DPS.

Alewife and blueback herring have been subjected to habitat impacts for centuries and to considerable fishing pressure for many decades. We acknowledge that they are at historically low levels, but note that improved fisheries management efforts in recent years have reduced fishing mortality rates on alewife and blueback herring stocks.

Many relatively robust populations of alewife exist, and genetic data show connectivity among populations (genetic continuum along the coastline) despite regional groupings. Demographic risks are low to *moderate* and significant threats have been reduced. Blueback herring are at a greater risk of extinction (as evidenced by over one third of the SRT likelihood points in the *moderate/high* categories), as indicated by lower overall abundances, increased vulnerability to anthropogenic disturbances in combination with climate change,

greater distances between populations, poorer performance at fishways, and uncertainties surrounding accurate distribution information rangewide. However, based upon the available information summarized here, blueback herring have an overall low risk of extinction rangewide and in each DPS, assuming the dominant threats to their populations continue to be managed.

We conclude that the alewife and blueback herring are not in danger of extinction, nor likely to become so in the foreseeable future throughout all or a significant portion of their ranges or in any of the DPSs. We summarize the factors supporting this conclusion as follows: (1) The species are broadly distributed over a large geographic range within the Northwest Atlantic Ocean and along the U.S. and Canadian Atlantic coasts, with no marine barriers to dispersal; (2) genetic data indicate that populations are not isolated and that both species demonstrate a nearest neighbor genetic continuum along the coast; (3) while both the species possesses life history characteristics that increase vulnerability to overutilization, overfishing is not currently occurring within the range; (4) while the current population size has significantly declined from historical numbers, the population size is sufficient to maintain population viability into the foreseeable future and consists of at least millions of individuals in several DPSs and hundreds of thousands in other DPSs; (5) there is no evidence that disease or predation is contributing to increasing the risk of extinction; and (6) there is no evidence that the species is currently suffering from depensatory processes (such as reduced likelihood of finding a mate or mate choice or diminished fertilization and recruitment success) or is at risk of extinction due to environmental variation or anthropogenic perturbations.

Since the alewife is not in danger of extinction throughout all or in a significant portion of its range, including DPSs, or likely to become so within the foreseeable future, it does not meet the definition of a threatened species or an endangered species. Therefore, the alewife does not warrant listing as threatened or endangered at this time.

Additionally, since the blueback herring is not in danger of extinction throughout all or a significant portion of its range, including DPSs, or likely to become so within the foreseeable future, it does not meet the definition of a threatened species or an endangered species. Therefore, the blueback herring does not warrant listing as threatened or endangered at this time.

References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 13, 2019.

Christopher Wayne Oliver,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Section 199A Rules for Cooperatives and Their Patrons; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118425–18]

RIN 1545–B090

Section 199A Rules for Cooperatives and Their Patrons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; withdrawal of notice of proposed rulemaking.

SUMMARY: These proposed regulations provide guidance to cooperatives to which sections 1381 through 1388 of the Internal Revenue Code (Code) apply (Cooperatives) and their patrons regarding the deduction for qualified business income (QBI) under section 199A(a) of the Code as well as guidance to specified agricultural or horticultural cooperatives (Specified Cooperatives) and their patrons regarding the deduction for domestic production activities under section 199A(g) of the Code. These proposed regulations also provide guidance on section 199A(b)(7), the rule requiring patrons of Specified Cooperatives to reduce their deduction for QBI under section 199A(a). In addition, these proposed regulations include a single definition of *patronage and nonpatronage* under section 1388 of the Code. Finally, these proposed regulations propose to remove the final regulations, and withdraw the proposed regulations that have not been finalized, under former section 199. These proposed regulations affect Cooperatives as well as patrons that are individuals, partnerships, S corporations, trusts, and estates engaged in domestic trades or businesses.

DATES: Written (including electronic) comments and requests for a public hearing must be received by August 19, 2019. As of June 19, 2019, the proposed rule published on August 27, 2015 (80 FR 51978), is withdrawn.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–118425–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–118425–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–1118425–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, James Holmes at (202) 317–4137; concerning submissions of comments and requests for hearing, Regina L. Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 199A and 1388 of the Code.

Section 199A was enacted on December 22, 2017, by section 11011 of ''An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,'' Public Law 115–97, 131 Stat. 2054, 2063 (TCJA). Parts of section 199A were amended on March 23, 2018, as if included in TCJA, by section 101 of Division T of the Consolidated Appropriations Act, 2018, Public Law 115–141, 132 Stat. 348, 1151 (2018 Act). Section 199A applies to taxable years beginning after 2017 and before 2026. Unless otherwise indicated, all references to section 199A are to section 199A as amended by the 2018 Act.

In addition, section 13305 of the TCJA repealed section 199 (former section 199), which provided a deduction for income attributable to domestic production activities (section 199 deduction). Public Law 115–97, 131 Stat. 2054, 2126. The repeal of former section 199 is effective for all taxable years beginning after 2017. This notice of proposed rulemaking therefore proposes to remove the final regulations under former section 199, and withdraws proposed regulations under former section 199.

Section 199A(a) provides taxpayers a deduction of up to 20 percent of QBI from a domestic business operated as a sole proprietorship or through a partnership, S corporation, trust, or estate, and up to 20 percent of qualified real estate investment trust (REIT) dividends and publicly traded partnership (PTP) income (section 199A(a) deduction). Section 199A(b)(7) requires patrons of Specified Cooperatives to reduce their section 199A(a) deduction if those patrons receive certain payments from such cooperatives. Section 199A(g) provides a deduction for Specified Cooperatives and their patrons (section 199A(g) deduction) that is based on the former section 199 deduction. Before the amendments of the 2018 Act, section 199A(g) provided a modified version of the section 199A(a) deduction for Specified Cooperatives.

The Treasury Department and the IRS published proposed regulations (REG–107892–18) providing guidance on the section 199A(a) deduction in the **Federal Register** (83 FR 40884) on August 16, 2018 (August 2018 NPRM). The final regulations were published in the **Federal Register** (84 FR 2952) on February 8, 2019 (TD 9847).

TD 9847 did not address patrons' treatment of payments received from Cooperatives for purposes of section 199A(a) or the section 199A(g) deduction for Specified Cooperatives, though it did restate the reduction required under section 199A(b)(7). *See* § 1.199A–1(e)(7). The August 2018 NPRM preamble stated that the Treasury Department and the IRS would continue to study the area and intended to issue separate proposed regulations describing rules for applying section 199A to Specified Cooperatives and their patrons. This notice of proposed rulemaking sets forth those proposed regulations and provides additional guidance to patrons calculating their 199A(a) deduction.

Explanation of Provisions

The purpose of these proposed regulations is to provide guidance regarding the application of sections 199A(a), 199A(b)(7), and 199A(g) to Cooperatives and their patrons as well as to Specified Cooperatives and their patrons. Whereas section 199A(a) is generally available to patrons of all Cooperatives, sections 199A(b)(7) and 199A(g) apply only to Specified Cooperatives and their patrons.

These proposed regulations are organized into six sections: Proposed §§ 1.199A–7 through 1.199A–12. Proposed § 1.199A–7 describes rules for patrons of Cooperatives to calculate their section 199A(a) deduction and rules for patrons of Specified Cooperatives to calculate the reduction to their section 199A(a) deduction as required by section 199A(b)(7). Unless otherwise provided in these proposed regulations, all of the rules set forth in TD 9847 relating to the section 199A(a) deduction apply to Cooperatives and their patrons. Specified Cooperatives are a subset of Cooperatives; therefore, the

requirements of proposed § 1.199A–7 also apply to Specified Cooperatives.

Proposed § 1.199A–8 sets out the criteria that Specified Cooperatives must satisfy to qualify for the section 199A(g) deduction, and sets forth four steps necessary to calculate this deduction. These proposed regulations provide that the section 199A(g) deduction available to Specified Cooperatives and their patrons is generally computed only with respect to patronage gross receipts and related deductions. Exempt Specified Cooperatives (those that qualify under section 521) may compute their section 199A(g) deductions with respect to both patronage and nonpatronage gross receipts and related deductions.

Proposed §§ 1.199A–9 through 1.199A–11 provide additional guidance, based on the regulations under former section 199, regarding the four steps set forth in proposed § 1.199A–8. Proposed § 1.199A–9 provides additional rules for determining a Specified Cooperative's domestic production gross receipts (DPGR). Proposed § 1.199A–10 provides additional rules for calculating costs (including cost of goods sold (COGS) and other expenses, losses, and deductions) allocable to a Specified Cooperative's DPGR. Proposed § 1.199A–11 provides additional rules for determining the W–2 wage limitation in section 199A(g)(1)(B). Proposed § 1.199A–12 details rules for applying section 199A(g) in the context of an expanded affiliated group (EAG) and other special rules contained in section 199A(g)(5) that are not otherwise addressed in these proposed regulations.

These proposed regulations also include, under section 1388, a single definition of *patronage and nonpatronage* in proposed § 1.1388–1(f), which is intended to reflect the current case law under section 1388. This Explanation of Provisions describes each section of the proposed regulations in more detail.

I. Proposed § 1.199A–7, Rules for Patrons of Cooperatives

A. In General

As noted in the Background, section 199A(a) may allow a taxpayer a deduction of up to 20 percent of QBI from a domestic business operated as a sole proprietorship or through a partnership, S corporation, trust, or estate, and up to 20 percent of qualified REIT dividends and PTP income. A section 199A(a) deduction is not available for wage income or for business income earned through a C corporation.

C corporations are not eligible for the section 199A(a) deduction. Cooperatives are C corporations for Federal income tax purposes and, therefore, are not eligible for the section 199A(a) deduction. Similarly, patrons that are C corporations are also not eligible for the section 199A(a) deduction. However, patrons that are individuals are eligible for the section 199A(a) deduction. Section 1.199A–1(a)(2) provides that, for purposes of applying the rules of §§ 1.199A–1 through 1.199A–6, a reference to an individual includes a reference to a trust (other than a grantor trust) or an estate to the extent that the section 199A(a) deduction is determined by the trust or estate under the rules of § 1.199A–6. These proposed regulations apply this same usage of the term *individual.*

The benefits of section 199A(a) are limited to individuals with income from a trade or business as defined in section 199A(d)(1) and § 1.199A–1(b)(14) (trade or business) with QBI. To the extent a patron operating a trade or business has income directly from that business (as opposed to receiving a patronage dividend from a Cooperative), the patron must follow the rules of §§ 1.199A–1 through 1.199A–6 to calculate the section 199A deduction. However, to the extent a patron receives patronage dividends or similar payments from a Cooperative, the patron must follow the additional special rules and clarification in proposed § 1.199A–7 to calculate the section 199A deduction.

For these purposes, patronage dividends or similar payments include money, property, qualified written notices of allocations, and qualified per-unit retain certificates for which an exempt or nonexempt Cooperative receives a deduction under section 1382(b), and nonpatronage distributions paid in money, property, qualified written notices of allocation as well as money or property paid in redemption of a nonqualified written notice of allocation for which an exempt Cooperative receives a deduction under section 1382(c)(2) (hereinafter collectively referred to as patronage dividends or similar payments).

Section 1.199A–7(c) and (d) of these proposed regulations provide that these patronage dividends or similar payments may be included in the patron's QBI: (i) To the extent that these payments are related to the patron's trade or business, (ii) are qualified items of income, gain, deduction, or loss at the Cooperative's trade or business level, (iii) are not income from a specified service trade or business (SSTB), as defined in section 199A(d)(2), at the Cooperative's trade or business level (except as permitted by the threshold rules, *see* § 1.199A–5(a)(2)), and (iv) provided the patron receives certain information from the Cooperative about these payments (see proposed § 1.199A–7(c)(3) and (d)(3)). Proposed § 1.199A–7(e) provides that in situations in which a patron conducts a trade or business that receives patronage dividends or similar payments from a Cooperative, the W–2 wages and unadjusted basis immediately after acquisition (UBIA) of qualified property considered are those of the patron's trade or business and not of the Cooperative that directly conducts the trade or business from which the payments arise. All of these proposed rules are discussed further in this section.

B. QBI of Patrons

Although Cooperatives are C corporations for Federal income tax purposes, section 1382(b) and (c) allow Cooperatives to determine taxable income after deducting distributions of patronage dividends or similar payments to patrons. The effect of these deductions is to remove the distributions from income taxed at the Cooperative level leaving it subject to income tax only at the patron level. Exempt and nonexempt Cooperatives are both permitted to deduct patronage distributions if they satisfy the requirements described in section 1382(b). Only exempt Cooperatives are permitted to also deduct nonpatronage distributions if the requirements under section 1382(c) are met. Cooperatives are subject to Federal income tax on income for which no deduction may be taken under section 1382(b) or (c), in the same manner as any C corporation.

Section 1.199A–3(b) contains the general rules regarding QBI. QBI is the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business as determined under those rules. While income from the ownership of a C corporation is generally not QBI, section 199A provides a special rule for patrons receiving patronage dividends from a Cooperative.

Section 199A(c)(3)(B)(ii) provides that any amount described in section 1385(a)(1), which concerns patronage dividends, is not treated as an exclusion to a patron's QBI. The Joint Committee on Taxation Report (JCX–6–18, released March 22, 2018) (Joint Committee Report) states that QBI includes any patronage dividend (as defined in section 1388(a)), per-unit retain allocation (as defined in section 1388(f)), qualified written notice of allocation (as defined in section

1388(c)), or any other similar amount received from a Cooperative, provided such amount is otherwise a qualified item of income, gain, deduction, or loss (that is, such amount is (i) effectively connected with the conduct of a trade or business within the United States, and (ii) included or allowed in determining taxable income for the taxable year). Joint Committee Report, pages 24–25. As a result, the rules of proposed § 1.199A–7(c) provide that patronage dividends or similar payments (as previously discussed) are included in calculating QBI for purposes of the patrons' section 199A(a) deduction provided the amounts are otherwise qualified items. To be otherwise qualified, these amounts must be qualified items of income, gain, deduction, and loss under section 199A(c)(3).

Unlike nonexempt Cooperatives, exempt Cooperatives are permitted to deduct nonpatronage distributions under section 1382(c). As a result, this income is subject to taxation only at the patron level. The rules of proposed § 1.199A–7(c) provide that a patron's QBI can include payments to patrons for which the exempt Cooperative receives a deduction under section 1382(c)(2) in addition to payments for which the exempt Cooperative receives a deduction under section 1382(b). That is, amounts paid under section 1382(c)(2) are treated by a patron as equivalent to patronage dividends under section 1382(b) for purposes of QBI. Amounts paid under section 1382(c)(1) (dividends on capital stock), however, are dividends from ownership of C corporations, which are not included in QBI.

TD 9847 generally provides that income is tested at the trade or business level where it is directly generated. Accordingly, these proposed regulations provide that patronage dividends or similar payments are considered to be generated from the trade or business the Cooperative conducts on behalf of or with the patron, and are tested by the Cooperative at its trade or business level.

A patron must determine QBI for each trade or business it directly conducts. However, in situations where the patron receives a distribution from a Cooperative that is a patronage dividend or similar payment, the Cooperative determines whether that distribution contains qualified items of income, as defined under section § 1.199A–3(b), and reports that information to the patron. The patron needs this information to determine its section 199A(a) deduction, and the Cooperative directly conducting the trade or business from which the distribution is derived is in the best position to know whether the patronage dividend or similar payment contains qualified items. The Cooperative must report this information regardless of whether the patron's taxable income does not exceed the threshold amount ($315,000 in the case of joint returns and $157,500 for all other taxpayers for any taxable year beginning before 2019). For taxable years beginning after 2018, *see* Rev. Proc. 2018–57, 2018–49 IRB 827, or its successor (relating to inflation adjustments).

A patron must use that information when determining the patron's section 199A(a) deduction. For example, if the Cooperative determines an entire distribution does not contain any qualified item of income, gain, deduction, and loss because it is not effectively connected with the conduct of the Cooperative's trade or business within the United States, the Cooperative does not include such amount when reporting qualified items to the patron, and the patron does not include the distribution in the patron's QBI. In addition, to the extent the distribution includes interest income that is not properly allocable to the Cooperative's trade or business on behalf of, or with, its patrons, the distribution is not a qualified item of income, gain, deduction, and loss. As a result, the Cooperative does not include such amount when reporting qualified items to the patron, and the patron does not include the income in the patron's QBI.

Proposed § 1.199A–7(c)(3) provides that the Cooperative must report the amount of qualified items of income, gain, deduction, or loss in the distributions made to the patron on an attachment to or on the Form 1099–PATR, Taxable Distributions Received From Cooperatives (Form 1099–PATR) (or any successor form), issued by the Cooperative to the patron, unless otherwise provided by the instructions to the Form. The Cooperative does not include any items from an SSTB in reporting the amount of qualified items of income, gain, deduction, and loss and must instead follow the rules in proposed § 1.199A–7(d) for income from an SSTB. If a patron does not receive such information from the Cooperative on or before the due date of the Form 1099–PATR, the amount of distributions from the Cooperative that may be included in the patron's QBI is presumed to be zero. This presumption does not apply to amounts of qualified items of income, gain, deduction and loss to the extent that they were not reported on the Form 1099–PATR or attachment thereto before the publication of these proposed regulations in the **Federal Register**. These rules apply to both exempt and nonexempt Cooperatives as well as patronage and nonpatronage distributions. The Treasury Department and the IRS request comments on these reporting requirements and whether any additional information from Cooperatives that make distributions to their patrons is needed for their patrons to determine their section 199A(a) deduction.

C. Specified Service Trade or Business

Section 199A(c)(1) provides that only items attributable to a qualified trade or business are taken into account in determining the section 199A(a) deduction for QBI. Under section 199A(d)(1) a ''qualified trade or business'' excludes (A) an SSTB or (B) the trade or business of performing services as an employee. TD 9847 provides that, unless an exception applies, if a trade or business is an SSTB, none of its items are to be taken into account for purposes of determining a taxpayer's QBI.

Under section 199A(d)(3), individuals with taxable income not exceeding the threshold amount ($315,000 in the case of joint returns and $157,500 for all other taxpayers for any taxable year beginning before 2019), are not subject to a restriction with respect to SSTBs. For taxable years beginning after 2018, *see* Rev. Proc. 2018–57, 2018–49 IRB 827, or its successor. Therefore, if an individual has taxable income not exceeding the threshold amount, the individual is eligible for the section 199A(a) deduction with respect to qualified items of income, gain, deduction, and loss from the SSTB notwithstanding that the trade or business is an SSTB. The inapplicability of the SSTB rules, W–2 wage limitation, and UBIA of qualified property limitation in computing the section 199A(a) deduction is subject to a phase-in for individuals with taxable income within the phase-in range. *See* the rules in § 1.199A–5 for the rules relating to SSTBs.

The rules in proposed § 1.199A–7(d) clarify that a patron (whether the patron is a relevant passthrough entity (RPE) or an individual) must determine whether the trades or businesses it directly conducts are SSTBs. These proposed rules also provide that in the case of a patron's trade or business that receives patronage dividends or similar payments distributed from a Cooperative, the Cooperative must determine whether the distributions from the Cooperative include items of

income, gain, deduction, and loss from an SSTB directly conducted by the Cooperative, and whether such items are qualified items with respect to such SSTB. The Cooperative must report to the patron the amount of qualified items of income, gain, deduction, and loss from an SSTB directly conducted by the Cooperative. The patron then determines if the distribution may be included in the patron's QBI depending on the patron's taxable income and the statutory phase-in and threshold amounts. Because the Cooperative may not know whether the patron's taxable income exceeds the threshold amount, the Cooperative must report this information to all patrons. Without this information, a patron with taxable income within the phase-in range or below the threshold amount would not have the information necessary to take into account the amount of qualified items of income, gain, deduction, and loss from an SSTB in determining the patron's section 199A(a) deduction for QBI. The rules in § 1.199A–5 are applied by the Cooperative to determine if the trade or business is an SSTB. For example, the Cooperative will apply the gross receipts de minimis rules in § 1.199A–5(c)(1) to determine if the trade or business is an SSTB.

Proposed § 1.199A–7(d)(3) provides that the Cooperative must report to the patron the amount of SSTB income, gain, deduction, and loss in distributions that is qualified with respect to any SSTB directly conducted by the Cooperative on an attachment to or on the Form 1099–PATR (or any successor form) issued by the Cooperative to the patron, unless otherwise provided by the instructions to the Form. If the Cooperative does not report the amount on or before the due date of the Form 1099–PATR, then only the amount that a Cooperative reports as qualified items of income, gain, deduction, and loss under § 1.199A–7(c)(3) may be included in the patron's QBI, and the remaining amount of distributions from the Cooperative that may be included in the patron's QBI is presumed to be zero. This presumption does not apply to amounts of qualified items of income, gain, deduction and loss to the extent that they were not reported on the Form 1099–PATR or attachment thereto before the publication of these proposed regulations in the **Federal Register**. These rules apply to both exempt and nonexempt Cooperatives as well as to patronage and nonpatronage distributions. The Treasury Department and the IRS request comments on these reporting requirements and whether any additional information from Cooperatives that make distributions to their patrons is needed for their patrons to determine their section 199A(a) deduction.

D. Determination of W–2 Wages and UBIA of Qualified Property

Section § 1.199A–1(d) addresses the calculation of the section 199A(a) deduction for individuals with taxable income exceeding the threshold amount and provides guidance on the application of these limitations. All of the rules relating to the REIT dividends and qualified PTP income component of the section 199A(a) deduction applicable to individuals with taxable income not exceeding the threshold amount also apply to individuals with taxable income exceeding the threshold amount. The QBI component of the section 199A(a) deduction, however, is subject to limitations for individuals with taxable income exceeding the threshold amount. These include the limitations based on the W–2 wages of the trade or business or a combination of the W–2 wages and the UBIA of qualified property.

Under § 1.199A–2, W–2 wages and UBIA of qualified property are determined by the individual or RPE that directly conducts the trade or business. Section 199A(f)(1)(A)(2)(iii) requires that S corporations and partnerships allocate W–2 wages and UBIA of qualified property to their owners in accordance with each owner's applicable share, and § 1.199A–6 contains additional information regarding these reporting requirements. Section 199A does not provide a similar rule for Cooperatives.

Section 199A(c)(3)(B)(ii) provides that patronage dividends or similar payments may be treated as qualified items of income. Only the Cooperative knows the origin and character of the patronage dividends or similar payments. As a result, the Cooperative must determine if these payments meet the statutory requirements in section 199A(c)(3), and must provide information to the patron for it to compute its section 199A(a) deduction. In contrast, section 199A contains special rules for W–2 wages and UBIA of qualified property. To provide that Cooperatives allocate their W–2 wages and UBIA of qualified property to their patrons would be to treat the Cooperatives as RPEs when they are C corporations. Therefore, the rules in proposed § 1.199A–7(e) provide that patrons directly conducting trades or businesses that receive patronage dividends or similar payments from a Cooperative calculate the W–2 wage and UBIA of qualified property limitations at the patron level based on the patrons' trades or businesses, without any regard to the Cooperative's W–2 wages or UBIA of qualified property.

In summary, a Cooperative must report to patrons: (i) Whether the patronage dividends or similar payments include qualified items of income, gain, deduction, and loss from a non-SSTB and (ii) whether the distributions from the Cooperative include qualified items of income, gain, deduction, and loss from an SSTB directly conducted by the Cooperative, but a Cooperative does not report any W–2 wages or UBIA of qualified property to patrons. The Treasury Department and the IRS request comments on these proposed rules regarding W–2 wages and UBIA of qualified property and whether it would be appropriate for Cooperatives to be required to report such amounts to patrons to determine their section 199A(a) deduction.

E. Special Rules for Patrons of Specified Cooperatives

Section 199A provides special rules for patrons of Specified Cooperatives. Because patrons of Specified Cooperatives may be eligible to take both a section 199A(a) and section 199A(g) deduction, section 199A(b)(7) provides that if a trade or business of a patron of a Specified Cooperative receives qualified payments (as defined in section 199A(g)(2)(e) and proposed § 1.199A–8(d)(2)(ii)) from such Specified Cooperative that are included in the patron's QBI, the patron must reduce its section 199A(a) deduction by the lesser of (i) 9 percent of so much of the QBI with respect to such trade or business that is properly allocable to qualified payments from the Specified Cooperative, or (ii) 50 percent of so much of the patrons' W–2 wages (determined under section 199A(b)(4)) with respect to such trade or business as are so allocable. This reduction is required by section 199A(b)(7) whether the Specified Cooperative passes through all, some, or none of the Specified Cooperative's section 199A(g) deduction to the patron in that taxable year.

Section 1.199A–3(b)(5) provides an allocation method for items of QBI attributable to more than one trade or business. That allocation method also applies to patrons with multiple trades or businesses. The rules in proposed § 1.199A–7(f)(2) provide an additional similar allocation method in situations where a patron receives qualified payments and income that is not a qualified payment in a trade or

business. The patron must allocate those items using a reasonable method based on all the facts and circumstances. Different reasonable methods may be used for different items of income, gain, deduction, and loss. The chosen reasonable method for each item must be consistently applied from one taxable year to another and must clearly reflect the income and expenses of each trade or business. The overall combination of methods must also be reasonably based on all the facts and circumstances. The books and records maintained for a trade or business must be consistent with any allocations. The Treasury Department and the IRS are open to considering whether a permissible ''reasonable method'' should be specified in regulations or permitted to include methods based on direct tracing, allocations based on gross income, or other methods, within appropriate parameters. The Treasury Department and the IRS request comments on possible reasonable methods for the allocation of items not clearly attributable to a single trade or business, and whether any safe harbors may be appropriate.

Because the section 199A(b)(7) reduction applies to the portion of a patron's QBI that relates to qualified payments from a Specified Cooperative, these proposed rules provide a safe harbor allocation method for patrons with taxable income not exceeding the threshold amounts set forth in section 199A(e)(2) to determine how to calculate the section 199A(b)(7) reduction. The safe harbor allocation method is intended to provide a straightforward method for patrons if their trade or business receives qualified payments from a Specified Cooperative in addition to other income. To calculate the required section 199A(b)(7) reduction, the patron must allocate the aggregate business expenses and W–2 wages between qualified payments and other gross receipts. The safe harbor allocation method allows patrons to allocate by ratably apportioning business expenses and W–2 wages based on the proportion that the amount of qualified payments bears to the total gross receipts used to determine QBI. The Treasury Department and the IRS request comments on this safe harbor rule and whether there are additional or alternative safe harbors that may be appropriate.

Further, to make the calculation required by section 199A(b)(7), the patron will need to know the qualified payments allocable to the patron that were used in calculating a Specified Cooperative's section 199A(g) deduction. In order to enable the patron to make this calculation, proposed § 1.199A–7(f)(3) requires the Specified Cooperative to report the amount of such qualified payments on an attachment to or on the Form 1099–PATR, (or any successor form) issued by the Cooperative to the patron, unless otherwise provided by the instructions to the Form.

F. Transition Rule

Congress provided a special transition rule relating to qualified payments under former section 199 made by Specified Cooperatives in section 101 of the 2018 Act. Under this transition rule, the repeal of former section 199 for taxable years beginning after December 31, 2017, does not apply to former section 199 qualified payments received by a patron from Specified Cooperatives in a taxable year beginning after December 31, 2017, to the extent such qualified payments are attributable to qualified production activities income (QPAI) with respect to which a deduction is allowable to the Specified Cooperatives under former section 199 for a taxable year of the Specified Cooperatives beginning before January 1, 2018. Such qualified payments remain subject to former section 199, and any deduction under former section 199 allocated by the Specified Cooperatives to their patrons related to such qualified payments may be deducted by such patrons in accordance with former section 199. In addition, no deduction is allowed under section 199A(a) and (g) with respect to such qualified payments. *See* Public Law 115–97, title I, § 13305(c), Dec. 22, 2017, 131 Stat. 2054, 2126 (codified as amended at I.R.C. § 74 Note), as amended by Public Law 115–141, div. T, § 101(c), Mar. 23, 2018, 132 Stat. 348, 1151, providing a transitional rule for qualified payments of patrons of Cooperatives.

Proposed § 1.199A–7(h)(3) and § 1.199A–8(h)(3) provide that the Cooperative must identify in a written notice to its patrons that a section 199A(a) deduction cannot be claimed for qualified payments that otherwise would constitute QBI in the patron's trade or business in a taxable year in which the qualified payments remain subject to former section 199. The Cooperative must report this information on an attachment to or on the Form 1099–PATR (or any successor form) issued by the Cooperative to the patron, unless otherwise provided by the instructions to the Form.

II. Proposed § 1.199A–8, Deduction for Income Attributable to Domestic Production Activities of Specified Cooperatives

A. In General

Section 199A(g) provides a deduction for Specified Cooperatives and their patrons that is similar in many respects to the deduction under former section 199. Proposed § 1.199A–8 provides definitions relating to the section 199A(g) deduction, establishes the criteria that a Specified Cooperative must satisfy to be eligible to claim the section 199A(g) deduction, and sets forth the necessary steps for a Specified Cooperative to calculate the section 199A(g) deduction.

B. Definitions

Proposed § 1.199A–8 defines the terms *patron, Specified Cooperative,* and *agricultural or horticultural products.* In defining *patron,* the Treasury Department and the IRS sought consistency with the rules under subchapter T of chapter 1 of subtitle A of the Code. Thus, the rules in proposed § 1.199A–8 cross-reference the definition of patron found in § 1.1388–1(e).

The definition of *Specified Cooperative* is consistent with the definition set forth in section 199A(g)(4). This definition is different from the definition of *Specified Cooperative* as originally provided by section 11011(a) of the TCJA (former section 199A(g)(3)), as it no longer includes a Cooperative solely engaged in the provision of supplies, equipment, or services to farmers or other Specified Cooperatives (former section 199A(g)(3)(C)).

Proposed § 1.199A–8(a)(4) defines *agricultural or horticultural products* as agricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed or manufactured products thereof within the meaning of the Cooperative Marketing Act of 1926, 44 Stat. 802 (1926). Agricultural or horticultural products also include aquatic products that are farmed whether by exempt or nonexempt Specified Cooperatives. *See* Rev. Rul. 64–246, 1964–2 C.B. 154. In addition, agricultural or horticultural products include fertilizer, diesel fuel, and other supplies used in agricultural or horticultural production that are manufactured, produced, grown, or extracted (MPGE) by the Specified

Cooperative. *See* Joint Committee Report, at 23, footnote 120.

Agricultural or horticultural products do not include intangible property. For example, an agricultural or horticultural product includes a seed that is grown, but does not include an intangible property right to reproduce a seed for sale. This exclusion of intangible property does not apply to intangible characteristics of any particular agricultural or horticultural product. For example, gross receipts from the sale of different varieties of oranges would all qualify as DPGR from the disposition of agricultural or horticultural products (assuming all other requirements of section 199A(g) are met). However, gross receipts from the license of the right to produce and sell a certain variety of oranges would be considered separate from the tangible oranges themselves and therefore not gross receipts from an agricultural or horticultural product. This exclusion is consistent with former section 199, which excluded intangible property other than computer software, any property described in section 168(f)(4) (sound recordings), and qualified film products.

The Treasury Department and the IRS considered a similar but alternative definition of *agricultural or horticultural* products as agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured product thereof within the meaning of the Agricultural Marketing Act of 1946, 60 Stat. 1091 (1946). While very similar to the definition set forth in these proposed rules, the Treasury Department and the IRS proposed using the definition based on the Cooperative Marketing Act of 1926, which specifically concerns cooperatives, unlike the Agricultural Marketing Act of 1946, which concerns the marketing and distribution of agricultural products.

The Treasury Department and the IRS also considered an alternative definition of *agricultural or horticultural products* based on general regulations under the Commodity Exchange Act. The Commodity Futures Trading Commission defines *agricultural commodities* as wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, but not onions; other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed or natural fiber; tobacco, products of horticulture, and such other commodities used or consumed by animals or humans. 17 CFR 1.3. The Treasury Department and the IRS concluded that this definition was too narrow, because it is limited to products that can be commodities.

The Treasury Department and the IRS are considering alternative definitions of *agricultural or horticultural products* to address concerns that the definition could be interpreted inconsistently with the ordinary meaning of agricultural or horticultural products. A clarification of the definition that is under consideration is the limitation of agricultural or horticultural products to products acquired from original producers, such as farmers, planters, ranchers, dairy farmers, or nut or fruit growers, and products thereof that are MPGE by Specified Cooperatives. The Treasury Department and the IRS request comments on whether the original producer approach being considered would be appropriate, as well as other approaches to defining agricultural or horticultural products. The Treasury Department and the IRS also request comments on the impact, if any, of the proposed definition on which products are MPGE by Specified Cooperatives.

A Specified Cooperative's gross receipts from the disposition of agricultural or horticultural products qualify as DPGR if the products were MPGE by the Specified Cooperative in whole or significant part within the United States. The proposed regulations define *in whole or significant part* for these purposes in proposed § 1.199A–9(h) and provide a 20 percent safe harbor for such determination in proposed § 1.199A–9(h)(3).

The definition of gross receipts in proposed § 1.199A–8(b)(2)(iii) is essentially the same as in § 1.199–3(c) issued under former section 199, except that this definition has been modified by removing references to section 1031 (exchange of real property held for productive use or investment) and tax-exempt interest within the meaning of section 103 (interest on State and local bonds). The reference to section 1031 is removed because that provision now applies only to real property. The section 199A(g) deduction is based on gross receipts derived from the disposition of agricultural or horticultural products and section 199A(g)(3)(D)(i) expressly excludes gross receipts derived from the disposition of land from DPGR. The reference to tax-exempt interest under section 103 is removed because it is appropriate for the definition of gross receipts to include only gross receipts that are taken into account in computing gross income under the Cooperative's methods of accounting used for Federal income tax purposes for the taxable year.

The Treasury Department and the IRS welcome comments regarding all aspects of these proposed definitions, including whether there is an alternative or more appropriate definition of *Specified Cooperative* or *agricultural or horticultural products,* and clarification of when MPGE is performed in whole or significant part in the United States that would provide greater certainty for taxpayers in complying with, and the IRS in administering, the requirements for claiming the section 199A(g) deduction. The Treasury Department and the IRS also welcome comments on the appropriateness of the 20 percent safe harbor in proposed § 1.199A–9(h)(3).

C. Steps for Calculating Section 199A(g) Deduction

Proposed § 1.199A–8 sets forth four required steps to determine the amount of a nonexempt Specified Cooperative's section 199A(g) deduction and provides rules to determine the amount of an exempt Specified Cooperative's section 199A(g) deduction.

i. Patronage/Nonpatronage Split

The first step under the rules of proposed § 1.199A–8 for calculating the section 199A(g) deduction requires nonexempt Specified Cooperatives to identify the gross receipts and related deductions (other than a deduction under section 199A(g)) that are from patronage sources and from nonpatronage sources. Specified Cooperatives must separate their patronage and nonpatronage gross receipts and related deductions when determining taxable income and allocating expenses between patronage and nonpatronage income to claim the tax deductions under section 1382(b) and (c). Cooperatives that have gross receipts only from patronage sources will be unaffected. Accordingly, the proposed regulations' requirement to divide patronage/nonpatronage gross receipts and related deductions should not significantly impact the existing

allocation requirements applicable to Specified Cooperatives.

This step is expressly included in these proposed rules because proposed § 1.199A–8 provides that for all purposes of the section 199A(g) deduction, nonexempt Specified Cooperatives may use only patronage gross receipts and related deductions to calculate DPGR, QPAI (including oil-related QPAI), taxable income, and the W–2 wage limitation.

Separating a nonexempt Specified Cooperative's patronage items from its nonpatronage items is consistent with the structure and intent of section 199A. Section 199A in its entirety is structured to give businesses that are not operating as C corporations a deduction that corresponds to the TCJA's reduction of the top corporate rate of tax under section 11. C corporations are expressly prohibited under section 199A(a) from claiming a section 199A(a) deduction, and under section 199A(g)(2)(D)(i) from claiming a section 199A(g) deduction. Although section 199A(g) provides a deduction for Specified Cooperatives, the statutory prohibitions preventing C corporations from benefiting under section 199A(g) (which were absent from the statutory text of former section 199) are in conflict with permitting a section 199A(g) deduction for the nonpatronage business of a nonexempt Specified Cooperative. Instead, nonpatronage source income of a nonexempt Specified Cooperative receives an alternate benefit shared by other C corporations: The TCJA's reduction of the top rate of tax under section 11 from 35 percent to 21 percent.

Moreover, the 2018 Act amended section 199A to address concerns that the TCJA created an unintended incentive for farmers and other producers to sell their agricultural or horticultural products to Cooperatives over independent buyers. The amendment to section 199A was intended to ensure a level playing field between Cooperatives and independent buyers. Without the split between patronage and nonpatronage businesses, Specified Cooperatives that may benefit from both a section 199A(g) deduction (from which taxpayers other than Specified Cooperatives cannot benefit) and the reduced corporate tax rate on nonpatronage business would be significantly advantaged over independent buyers who could benefit only from the reduced corporate tax rate under section 11.

Accordingly, the Treasury Department and the IRS have determined that it is appropriate to limit the source of the gross receipts and related deductions taken into account for purposes of the section 199A(g) deduction for nonexempt Specified Cooperatives to items properly allocated to a nonexempt Specified Cooperative's patronage business. The Treasury Department and the IRS request comments regarding these proposed rules, including comments explaining any policy rationale that would justify treating the nonpatronage business of a nonexempt Specified Cooperative differently from the business operations of any other C corporation subject to the tax imposed under section 11.

ii. Identifying Patronage DPGR

The second step set forth in proposed § 1.199A–8 is for nonexempt Specified Cooperatives to identify patronage gross receipts that qualify as DPGR. The rules in proposed § 1.199A–8 point nonexempt Specified Cooperatives to proposed § 1.199A–9 for additional information on DPGR. The rules in proposed § 1.199A–9 do not refer to gross receipts from patronage or nonpatronage business because the rules only provide additional information supplementing the determination of DPGR from dispositions of agricultural or horticultural products. When applying § 1.199A–9, which occurs after step 1 in § 1.199A–8, the only gross receipts of a nonexempt Specified Cooperative considered would be those derived from patronage sources. Proposed § 1.199A–9 is essentially the same as §§ 1.199–1 and 1.199–3 issued under former section 199, adjusted to apply to Specified Cooperatives.

iii. Calculating Patronage QPAI

The third step set forth in proposed § 1.199A–8 is for nonexempt Specified Cooperatives to calculate QPAI (including oil-related QPAI) from only their patronage DPGR. To do this, nonexempt Specified Cooperatives must determine COGS and other expenses, losses, or deductions that are allocable to patronage DPGR. Nonexempt Specified Cooperatives are directed to consult proposed § 1.199A–10 for additional information on making these allocations. Proposed § 1.199A–10 does not refer to patronage or nonpatronage QPAI or DPGR because it only provides additional information supplementing the QPAI calculation. Proposed § 1.199A–10 is essentially the same as § 1.199–4 issued under former section 199, adjusted to apply to Specified Cooperatives.

iv. Calculating Patronage Section 199A(g) Deduction

The fourth and final step set forth in proposed § 1.199A–8 is for nonexempt Specified Cooperatives to calculate their section 199A(g) deduction, which is equal to 9 percent of the lesser of QPAI or taxable income, and subject to the W–2 wage limitation. Nonexempt Specified Cooperatives are directed to consult proposed § 1.199A–11 for additional information on the W–2 wage limitation. Proposed § 1.199A–11 does not refer to patronage or nonpatronage QPAI, taxable income, or W–2 wages because it only provides additional information supplementing the W–2 wage limitation. Proposed § 1.199A–11 is essentially the same as § 1.199–2 issued under former section 199, adjusted to apply to Specified Cooperatives.

v. Exempt Specified Cooperatives

Proposed § 1.199A–8(c) provides that exempt Specified Cooperatives calculate two separate section 199A(g) deductions, one based on gross receipts and related deductions from patronage sources, and one based on gross receipts and related deductions from nonpatronage sources. Like a nonexempt Specified Cooperative, an exempt Specified Cooperative earns patronage income that is not taxed to the extent of any section 1382(b) deduction for patronage distributions made to patrons. Exempt Specified Cooperatives are also not taxed on any nonpatronage income to the extent of any section 1382(c) deduction for nonpatronage distributions. Unlike the usual taxation of C corporations, the section 1382 deductions allow an exempt Specified Cooperative to be treated more like a passthrough entity by reducing the exempt Specified Cooperative's patronage and nonpatronage income. It is therefore appropriate that the exempt Specified Cooperatives may take a section 199A(g) deduction on both patronage and nonpatronage income that could be deducted under section 1382(b) and (c)(2).

As described earlier, calculating two section 199A(g) deductions is consistent with the administration of former section 199. To calculate the two section 199A(g) deductions, an exempt Specified Cooperative is required under proposed § 1.199A–8 to perform steps two through four twice, first using only its patronage gross receipts and related deductions and second using only its nonpatronage gross receipts and related deductions. An exempt Specified Cooperative cannot combine, merge, or net patronage and nonpatronage items at any step in determining its patronage section 199A(g) deduction and its nonpatronage section 199A(g) deduction.

D. Special Rule for Oil-Related QPAI

Section 199A(g)(5)(E) contains a special rule for Specified Cooperatives with oil-related QPAI, which requires a reduction by 3 percent of the least of oil-related QPAI, QPAI, or taxable income of the Specified Cooperative for the taxable year. The language of this rule is the same as the language used in former section 199(d)(9). Former section 199(d)(9), which applied to taxable years beginning after December 31, 2008, was added by section 401(a), Division B of the Energy Extension Act of 2008, Public Law 110–343, 122 Stat. 3765 (2008). These proposed rules include rules for oil-related QPAI that are similar to those contained in proposed regulations (REG–136459–09) relating to the section 199 deduction published in the **Federal Register** (80 FR 51978) on August 27, 2015 (2015 Proposed Regulations).

The 2015 Proposed Regulations included rules related to a taxpayer's determination of oil-related QPAI (with respect to which no comments were received). Although not finalized, the 2015 Proposed Regulations are the only existing guidance concerning a taxpayer's determination of oil-related QPAI. The preamble to the 2015 Proposed Regulations includes an explanation of the reasons supporting the proposed provisions, and these reasons continue to apply. These include the determination that gross receipts from transportation and distribution of oil are not included in the calculation of oil-related QPAI, unless the gross receipts are considered DPGR under the de minimis rule or an exception for embedded services now contained in proposed § 1.199A–9. Gross receipts from transportation and distribution are not included in QPAI and DPGR (unless an exception applies), and therefore it is appropriate to exclude such gross receipts when calculating oil-related QPAI.

E. Rules for Passing Section 199A(g) Deduction to Patrons

Once a Specified Cooperative calculates the section 199A(g) deduction, it may pass on the section 199A(g) deduction to patrons who are eligible taxpayers as defined in section 199A(g)(2)(D), that is, (i) a patron that is other than a C corporation or (ii) a patron that is a Specified Cooperative. Section 199A(g)(2)(A) requires the Specified Cooperative to identify the amount of the section 199A(g) deduction being passed to a patron in a notice (required by proposed § 1.199A–8(d)(3)) mailed to the eligible patron during the payment period described in section 1382(d). The amount of the section 199A(g) deduction that a Specified Cooperative can pass through to an eligible taxpayer is limited to the portion of the section 199A(g) deduction that is allowed with respect to the QPAI to which the qualified payments made to the eligible taxpayer are attributable. Section 199A(g)(2)(E) defines qualified payments as those that are included in the eligible taxpayer's income under section 1385(a)(1) and (3) (referencing patronage dividends and per-unit retain allocations). Proposed § 1.199A–8 further provides that a Specified Cooperative that receives a section 199A(g) deduction as an eligible taxpayer can take the deduction only against patronage gross income and related deductions, or pass on the deduction to its patrons that are eligible taxpayers. The proposed rules do not allow an exempt Specified Cooperative to pass through any of the section 199A(g) deduction attributable to nonpatronage activities because no QPAI is attributable to any qualified payments. The rules of proposed § 1.199A–8 are essentially the same as the rules of § 1.199–6, adjusted to include other provisions of the section 199 final regulations as well as proposed rules set forth in the 2015 Proposed Regulations.

F. Cooperative as a Partner in a Partnership

Proposed § 1.199A–8(f) provides guidance regarding circumstances in which a Specified Cooperative is a partner in a partnership as described under section 199A(g)(5)(B). The proposed rules provide that the partnership must separately identify and report on the Schedule K–1 to the Form 1065, U.S. Return of Partnership Income, (or any successor form) issued to its partner, unless otherwise provided by the instructions to the Form, the Specified Cooperative's allocable share of gross receipts and related deductions. This allows the Specified Cooperative partner to apply the four steps in proposed § 1.199A–8 required to calculate its patronage section 199A(g) deduction (or patronage and nonpatronage section 199A(g) deductions in the case of an exempt Specified Cooperative).

III. Proposed § 1.199A–9, Domestic Production Gross Receipts

A. In General

Section 199A(g)(3)(D) defines the term *domestic production gross receipts* to mean gross receipts of a Specified Cooperative derived from any lease, rental, license, sale, exchange, or other disposition (collectively, a ''disposition'') of any agricultural or horticultural product which was MPGE (determined after application of section 199A(g)(4)(B)) by the Specified Cooperative in whole or significant part within the United States. Such term does not include gross receipts of the Specified Cooperative derived from a disposition of land or from services. These proposed regulations are based on § 1.199–3 issued under former section 199, but remove provisions that would not apply to the disposition of agricultural or horticultural products.

DPGR includes the gross receipts that a Specified Cooperative derives from marketing agricultural or horticultural products for patrons. Section 199A(g)(4)(B) treats marketing Specified Cooperatives as having MPGE any agricultural or horticultural product in whole or significant part within the United States if their patrons have done so. The Treasury Department and the IRS considered whether this rule should apply between Specified Cooperatives and patrons taxed as C corporations. These proposed regulations allow attribution to apply as provided in section 199A(g)(4)(B) because the statute does not distinguish between types of patrons. However, these proposed regulations do not allow a Specified Cooperative to pass through to a C corporation any of the section 199A(g) deduction of the Specified Cooperative attributable to the disposition of such agricultural or horticultural products. This is because, under section 199A(g)(2)(D), taxpayers taxed as C corporations are not eligible to claim a section 199A(g) deduction from the Specified Cooperative. These proposed regulations incorporate the rules from § 1.199–1(d)(1) through (3) and (e), issued under former section 199, as applicable. These rules relate to the allocation of gross receipts between DPGR and non-DPGR, and the determination of whether an allocation method is reasonable. Further, the rules include provisions permitting Specified Cooperatives to treat de minimis gross receipts as DPGR or non-DPGR without allocating such gross receipts, and a provision permitting the use of historical data to allocate gross receipts for certain multiple-year transactions. The Treasury Department and the IRS welcome comments regarding all aspects of these proposed rules. When incorporating these concepts from the former section 199 regulations, the Treasury Department and the IRS determined that the appropriate section of these proposed regulations in which to include such guidance was proposed

§ 1.199A–9. This is not a substantive change, but rather a reorganization to improve clarity.

B. Definition of Manufactured, Produced, Grown, Extracted

The definition of the term *MPGE* is included in proposed § 1.199A–9 and is generally consistent with the definition in § 1.199–3(e)(1). However, these proposed regulations revise the rule in § 1.199–3(e)(2) by removing the concept of minor assembly. In the 2015 Proposed Regulations, the Treasury Department and the IRS requested comments on defining the term *minor assembly* because of the difficulty in identifying a widely applicable objective test. Based on the comments received and the restriction on the section 199A(g) deduction to agricultural or horticultural products, proposed § 1.199A–9 does not include the term *minor assembly* included in § 1.199–3(e)(2). This exclusion does not impact a taxpayer's obligation to meet all of the other requirements to qualify for the section 199A(g) deduction. The Treasury Department and the IRS request comments on whether the concept of minor assembly should be retained and, if so, how this term should be defined.

C. By the Taxpayer

With respect to the phrase ''by the taxpayer'' as used in section 199A(g)(3)(D)(i), these proposed regulations adopt the rule from § 1.199–3(f)(1) as applicable, rather than the rule in the 2015 Proposed Regulations. In a contract manufacturing arrangement, this means that a Specified Cooperative must have the benefits and burdens of ownership of the agricultural or horticultural product during the period in which the MPGE activity occurs in order for the Specified Cooperative to be treated as engaging in such MPGE activity. The 2015 Proposed Regulations provided a different rule for contract manufacturing arrangements. The 2015 Proposed Regulations provided that if a qualifying activity is performed under a contract, then the party that performs the qualifying activity is the taxpayer for purposes of section 199(c)(4)(A)(i). Under the rule in the 2015 Proposed Regulations, a Specified Cooperative that contracts with another party for the MPGE of an agricultural or horticultural product would never qualify as ''the taxpayer'' for purposes of the section 199A(g) deduction. This result fails to provide any incentive for Specified Cooperatives to retain the benefits and burdens of ownership and to ensure that production occurs within the United States. Therefore, to maintain such an incentive, the proposed regulations maintain the rule from § 1.199–3(f)(1). The Treasury Department and the IRS request comments on the continued use of the rule from § 1.199–3(f)(1).

D. Other Provisions in Proposed § 1.199A–9

The remainder of the rules in proposed § 1.199A–9 are based on the existing regulations in § 1.199–3. These rules should be interpreted in a manner consistent with the interpretation under former section 199. The Treasury Department and the IRS request comments on any conception or definition that in application would be over or under-inclusive under the proposed regulations, or any instances where they should interpret the rules differently from the interpretation under former section 199.

IV. Proposed § 1.199A–10, Costs Allocable to DPGR

Proposed § 1.199A–10 provides guidance on the allocation of costs to DPGR. This section provides rules for allocating a taxpayer's COGS, as well as other expenses, losses, and deductions properly allocable to DPGR. These proposed regulations are based on and follow the section 199 regulations in § 1.199–4.

V. Proposed § 1.199A–11, Wage Limitation

Proposed § 1.199A–11 provides guidance regarding the W–2 wage limitation on the section 199A(g) deduction. A notice of proposed revenue procedure, Notice 2019–27, 2019–16 IRB, which proposes a draft revenue procedure providing three proposed methods that Specified Cooperatives may use for calculating W–2 wages, is being issued concurrently with this notice of proposed rulemaking. The guidance contained in the notice of proposed revenue procedure is necessary because changes may be made to the underlying Form W–2, Wage and Tax Statement, on a more frequent basis than updates to the regulations under section 199A(g), for regulatory and statutory reasons independent of section 199A. The three proposed methods for calculating W–2 wages in the notice are substantially similar to the methods provided in Rev. Proc. 2006–47, 2006–2 C.B. 869 (relating to the section 199 deduction), and Rev. Proc. 2019–11, 2019–09 IRB 742 (relating to the section 199A(a) deduction). The Treasury Department and the IRS propose these methods in a notice of proposed revenue procedure rather than in the notice of proposed rulemaking to maintain consistency with the rules under former section 199 and the rules under section 199A. The notice of proposed revenue procedure invites comments from the public.

Under the proposed regulations, W–2 wages for the purpose of the wage limitation in section 199A(g) are generally determined in a manner that is similar to the manner in which W–2 wages are determined for the purpose of the deduction under section 199A(a) (that is, using the definition of W–2 wages under section 199A(b)(4)), with three significant differences. First, section 199A(g)(1)(B)(ii) provides that W–2 wages are determined without regard to section 199A(b)(4)(B), which excludes from the definition amounts not properly allocable to QBI for purposes of section 199A(c)(1). Second, W–2 wages under section 199A(g) do not include any amount that is not properly allocable to DPGR. Finally, W–2 wages under section 199A(g) do not generally include any remuneration paid for services in the commonwealth of Puerto Rico and other United States territories. Specifically, section 199A(g)(1)(B)(ii) provides that W–2 wages are determined in the same manner as under section 199A(b)(4), and section 199A(b)(4)(A) defines wages as amounts described in section 6051(a)(3) and (8). The amounts described in section 6051(a)(3) are ''wages as defined in section 3401(a).'' Section 3401(a)(8) generally excludes from the definition of wages in section 3401(a) wages paid with respect to employment in the commonwealth of Puerto Rico and other United States territories. Therefore, wages paid with respect to employment in the commonwealth of Puerto Rico and other United States territories are generally not W–2 wages within the meaning of section 199A(b)(4)(A). This contrasts with the section 199A(a) deduction for which section 199A(f)(1)(C)(ii) allows certain taxpayers with QBI from sources within the commonwealth of Puerto Rico (section 199A(f)(1)(C)(ii) applies only to Puerto Rico and not to other United States territories) to compute section 199A(b)(4) W–2 wages without regard to section 3401(a)(8). Since the section 199A(g) deduction is determined based on QPAI, not QBI, section 199A(f)(1)(C)(ii) does not apply to the deduction under section 199A(g). Given the distinction between QBI and QPAI on which the section 199A(a) and section 199A(g) deductions are respectively provided, and the absence of a provision similar to 199A(f)(1)(C)(ii) with respect to QPAI, the Treasury Department and the IRS have determined that remuneration paid with

respect to employment in the commonwealth of Puerto Rico cannot be used in determining W–2 wages for purposes of section 199A(g). The Treasury Department and the IRS request comments with respect to this determination.

VI. Proposed § 1.199A–12, EAG Rules

Proposed § 1.199A–12 provides guidance on the application of section 199A(g) to an EAG under section 199A(g)(5)(A)(iii) that includes a Specified Cooperative. Unlike the section 199 deduction, the section 199A(g) deduction is limited to Specified Cooperatives. These proposed regulations address how the rules separating patronage and nonpatronage income and deductions apply in the context of an EAG. Proposed § 1.199A–12 provides that in the case of nonexempt Specified Cooperatives, attribution between the members of an EAG is allowed provided the DPGR and related deductions are patronage. In the case of exempt Specified Cooperatives, attribution is allowed in all events because exempt Specified Cooperatives are allowed to take a separate 199A(g) deduction on both their patronage and nonpatronage income.

Proposed § 1.199A–12 also provides certain rules for partnerships owned by an EAG as described in section 199A(g)(5)(A)(ii).

VII. Proposed § 1.1388–1(f)

Proposed § 1.1388–1(f) sets forth a definition of *patronage and nonpatronage* that is consistent with the current case law under section 1388. Specifically, the proposed definition adopts the directly related test, which is a fact specific test for determining whether income and deductions of a Cooperative are patronage or nonpatronage. The Treasury Department and the IRS request comments with respect to this definition.

VIII. Proposed Removal of Section 199 Regulations and Withdrawal of 2015 Proposed Regulations

In light of the TCJA, the Treasury Department and the IRS propose to remove the section 199 regulations (§§ 1.199–0 through 1.199–9) and withdraw the 2015 Proposed Regulations because the regulations interpret a provision of the Code that has been repealed for taxable years beginning after December 31, 2017.

The proposed removal of these regulations is unrelated to the substance of the rules in the regulations, and no negative inference regarding the stated rules should be made. Such regulations are proposed to be removed from the Code of Federal Regulations (CFR) solely because they have no future applicability. Removal of these regulations is not intended to alter any non-regulatory guidance that cites to or relies upon these regulations. These regulations as contained in 26 CFR part 1, revised April 1, 2019, remain applicable to determining eligibility for the section 199 deduction for any taxable year that began before January 1, 2018. The beginning date of the taxable year of a partnership, S corporation, or a non-grantor trust or estate, rather than the taxable year of a partner, shareholder, or beneficiary is used to determine items that are taken into account for purposes of calculating a section 199 deduction. This is consistent with the initial application of section 199 in 2005. Items arising from a passthrough entity that had a fiscal year beginning before 2005 were not taken into account by calendar-year partners for purposes of the section 199 deduction. Public Law 109–135, section 102(a) (Gulf Opportunity Zone Act of 2005). Further, when section 199 was amended to narrow the definition of W–2 wages, the amendment was effective for taxable years beginning after May 17, 2006. *See* Public Law 109–222, section 514(a) (Tax Increase Prevention and Reconciliation Act of 2005). Under the transition rule in § 1.199–5(b)(4), partners and partnerships used the taxable year of the partnerships to determine the applicable definition of W–2 wages, and there are similar rules in § 1.199–5(c)(4) for S corporations and § 1.199–5(e)(3) for non-grantor trusts and estates.

Proposed Effective/Applicability Date

Section 7805(b)(1)(A) and (B) of the Code generally provide that no temporary, proposed, or final regulation relating to the internal revenue laws may apply to any taxable period ending before the earliest of (A) the date on which such regulation is filed with the **Federal Register**, or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was filed with the **Federal Register**.

Consistent with authority provided by section 7805(b)(1)(A), the proposed regulations are proposed to apply to taxable years beginning after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Taxpayers may rely upon these proposed regulations, in their entirety, before the date of publication of the Treasury Decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess 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.

These proposed regulations have been designated by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by the Office of Management and Budget.

In addition, the Treasury Department and the IRS expect the proposed regulations, when final, to be an Executive Order 13771 regulatory action and request comment on this designation.

A. Background and Overview

The TCJA repealed section 199, which provided a deduction for income attributable to domestic production activities. In its place it created section 199A, which provides a deduction for qualified business income derived from passthrough businesses—such as sole proprietorships, partnerships, and S corporations—engaged in domestic trades or businesses. While the repealed section 199 deduction was generally available to all taxpayers, the section 199A deduction is available only to taxpayers other than C corporations. On March 23, 2018, the 2018 Act modified section 199A(g) to provide deductions for Specified Cooperatives and their patrons that are substantially similar to those under the repealed section 199 deduction. Accordingly, these regulations generally formalize prior and current practices based on the rules under former section 199. The 2018 Act also added section 199A(b)(7), which requires patrons of Specified Cooperatives to reduce their section

199A(a) deduction if those patrons receive qualified payments from Specified Cooperatives.

The estimated number of Cooperatives affected by the 2018 Act and these proposed regulations is 9,000, including approximately 2,000 Specified Cooperatives, based on 2017 tax filings.

B. Need for the Proposed Regulations

The proposed regulations provide guidance regarding the application of sections 199A(a), 199A(b)(7), and 199A(g) to Cooperatives, Specified Cooperatives, and their patrons. The proposed regulations are needed because the 2018 Act introduced a number of terms and calculations. Patrons, Cooperatives, and Specified Cooperatives would benefit from greater specificity regarding these and other items.

C. Economic Analysis

1. Baseline

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

2. Economic Rationale for Issuing Guidance for the 2018 Act

The Treasury Department and the IRS anticipate that the issuance of guidance pertaining to sections 199A(a), 199A(b)(7), and 199A(g) of the 2018 Act to Cooperatives, Specified Cooperatives, and their patrons will provide a net economic benefit to the overall U.S. economy.

The proposed regulations clarify a number of concepts related to the section 199A(a) deduction for patrons of Cooperatives, provide guidance to patrons of Specified Cooperatives who may be required to reduce their section 199A(a) deduction under section 199A(b)(7), and provide guidance to Specified Cooperatives on the section 199A(g) deduction on income attributable to their domestic production activities. In the absence of guidance, affected taxpayers would have to calculate their tax liability without the definitions and clarifications provided by the proposed regulations, a situation that is generally considered more burdensome and could lead to greater conflicts with tax administrators. Thus, the Treasury Department and the IRS project that the proposed regulations will reduce taxpayer compliance burden and the costs of tax administration relative to not issuing any such guidance.

This guidance also ensures that section 199A deductions are calculated similarly across taxpayers, avoiding situations where one taxpayer receives preferential treatment over another for fundamentally similar economic activity. For example, in the absence of these proposed regulations, a Specified Cooperative may have uncertainty over what type of income is eligible for the section 199A(g) deduction. If a Specified Cooperative claimed the section 199A(g) deduction on income that already benefits from a lower corporate tax rate, this would confer an unintended economic benefit to the Specified Cooperative over other C corporations performing identical activities that only benefit from a lower corporate tax rate. As discussed further below, this guidance prevents the introduction of distortions of economic decisions in the agricultural or horticultural sector.

In the absence of these proposed regulations, uncertainty over statutory interpretation could lead to economic losses to the extent that taxpayers interpret the statute in ways that are inconsistent with the statute's intents and purposes. For example, a Specified Cooperative may pursue a project involving a certain product that is only profitable if that product is deemed ''agricultural or horticultural'' and thus eligible for the section 199A(g) deduction. If, in fact, this product is ineligible for the deduction based on the intents and purposes of the statute, then the project should not have been pursued and this results in an economic loss. Alternatively, without a definition of ''agricultural or horticultural,'' a Specified Cooperative may incorrectly assume that a project is not eligible for the deduction and not pursue the project, which could also result in an economic loss. In such cases, guidance provides value by bringing economic decisions closer in line with Congress' intent or, when such intent is broad, with decisions that are economically efficient contingent on the overall Code. While no guidance can fully curtail all inaccurate interpretations of the statute, the proposed regulations significantly mitigate the chance for such interpretations and thereby increase economic efficiency. Due to the lack of readily available data, the Treasury Department and the IRS have not estimated the increase in United States economic activity that would arise from the proposed guidance.

The Treasury Department further projects that the issuance of guidance will reduce taxpayer compliance burden and the costs of tax administration relative to a no-action baseline. Due to the lack of readily available data, the Treasury Department has not estimated the decrease in taxpayer compliance burden nor tax administration costs arising from the issuance of guidance. The Treasury Department and the IRS request comments and information that can allow estimation of economic impacts and any changes in taxpayer compliance burden resulting from the proposed guidance.

3. Economic Analysis of Specific Provisions

The proposed regulations embody certain regulatory decisions that reflect necessary regulatory discretion. These decisions specify more fully how the 2018 Act is to be implemented.

The Treasury Department and the IRS solicit comments on the economic impacts of each of the items discussed in this section and of any other items of the proposed regulations not discussed in this section. The Treasury Department and the IRS particularly solicit comments that provide data, other evidence, or models that could enhance the rigor of the process by which provisions might be developed for the final regulations.

i. Determining Section 199A(g) Deduction

Specified Cooperatives are taxed differently depending on whether they are exempt (qualified as a cooperative under section 521) or nonexempt (qualified under rules elsewhere in the Code) and also whether their income is from patronage (generally related to the cooperative's marketing, purchasing, or services activities) or nonpatronage sources. In the case of exempt Specified Cooperatives patronage and nonpatronage source income is subject to a single level of tax at the patron level. Whereas, for nonexempt Specified Cooperatives only patronage source income is subject to a single level of tax at the patron level; nonpatronage source income is subject to a double level of tax, similar to other C corporations. Because the Code does not define *patronage and nonpatronage* source income, proposed § 1.1388–1(f) sets forth a definition of *patronage and nonpatronage* that is consistent with the current state of federal case law. Specifically, the proposed definition adopts the directly related test, which is a fact specific test for determining whether income and deductions of a Cooperative are patronage or nonpatronage. Specifying a definition that is consistent with current case law will help to minimize the economic impacts of these proposed regulations. The Treasury Department and the IRS

request comments with respect to this definition.

The TCJA reduced the corporate tax rate for C corporations under section 11 and provided the section 199A deduction for domestic businesses operated as sole proprietorships or through partnerships, S corporations, trusts, or estates. The TCJA also repealed section 199, which did not preclude deductions on income earned by C corporations. The 2018 Act amended section 199A to address concerns that the TCJA created an unintended incentive for farmers to sell their agricultural or horticultural products to Specified Cooperatives over independent buyers. Specifically, the 2018 Act amended section 199A(g) to allow Specified Cooperatives and their patrons a deduction similar to the former section 199 deduction. Because the section 199A(g) deduction is not intended to benefit C corporations and their shareholders in general, the proposed regulations specify that the section 199A(g) deduction can be claimed on income that can be subject to tax only at the patron level. Under the proposed regulations, non-exempt Specified Cooperatives may not claim the section 199A(g) deductions on income that cannot be paid to patrons and deducted under section 1382(b) and exempt Specified Cooperatives may not claim section 199A(g) deductions on income that cannot be paid to patrons and deducted under sections 1382(b) or 1382(c)(2).

In the absence of these proposed regulations, a Specified Cooperative may have uncertainty as to whether non-patronage source income, which would be taxed in the same manner as a C corporation, could receive both the lower corporate tax rate and be further offset by a section 199A(g) deduction. Other C corporations performing identical activities would only benefit from the lower corporate tax rate.

The Treasury Department and the IRS have determined that this potential uncertainty as to tax treatment could distort economic decisions in the agricultural or horticultural sector. The proposed regulations avoid this outcome, promoting a more efficient allocation of resources by providing more uniform incentives across taxpayers.

ii. Definition of Agricultural or Horticultural Products

Proposed § 1.199A–8(a)(4) defines *agricultural or horticultural products* as agricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed or manufactured products thereof within the meaning of the Cooperative Marketing Act of 1926. Agricultural or horticultural products also include aquatic products that are farmed as well as fertilizer, diesel fuel, and other supplies used in agricultural or horticultural production that are MPGE by the Specified Cooperative. Agricultural or horticultural products, however, do not include intangible property, since agricultural or horticultural products were considered a subset of tangible property under former section 199. Intangible property (defined in § 1.199–3(j)(2)(iii)) was a separate category of property and gross receipts from intangible property did not qualify as DPGR.

The Treasury Department and the IRS considered other definitions of agricultural or horticultural products but determined that taxpayer burden and tax administration costs would be lowest under a definition that was consistent with extant law.

For example, the Treasury Department and the IRS considered a similar but alternative definition of *agricultural or horticultural* products as agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured product thereof within the meaning of the Agricultural Marketing Act of 1946. While very similar to the definition in these proposed rules, the Treasury Department and the IRS proposed using the definition based on the Cooperative Marketing Act of 1926, which specifically concerns cooperatives and with which Specified Cooperatives are familiar, unlike the Agricultural Marketing Act of 1946, which concerns the marketing and distribution of agricultural products without reference to Cooperatives. The Treasury Department and the IRS looked to the United States Department of Agriculture (USDA) for definitions because there is no definition of *agricultural or horticultural products* in the Internal Revenue Code or Income Tax Regulations and because the USDA has expertise concerning Specified Cooperatives and because Specified Cooperatives are likely familiar with USDA law.

The Treasury Department and the IRS also considered an alternative definition of *agricultural or horticultural products* based on the definition of agricultural commodities within the meaning of general regulations under the Commodity Exchange Act. The Treasury Department and the IRS concluded that this definition was too narrow, because it is limited to products that can be commodities. The use of this narrow definition would have restricted the range of products for which the section 199A(g) deduction would be otherwise be available.

The Treasury Department and the IRS request comments on other approaches to defining agricultural or horticultural products. The Treasury Department and the IRS did not attempt to provide quantitative estimates of the revenue effects or economic consequences of different designations of agricultural or horticultural products because suitable data are not readily available at this level of detail. The Treasury Department and the IRS request comments that can inform such estimation.

iii. De Minimis Threshold

In general, proposed § 1.199A–9 requires that Specified Cooperatives allocate gross receipts between domestic production gross receipts (DPGR) and non-DPGR. However, proposed § 1.199A–9(c)(3) includes a de minimis provision that allows Specified Cooperatives to allocate total gross receipts to DPGR if less than 5 percent of total gross receipts are non-DPGR or to allocate total gross receipts to non-DPGR if less than 5 percent of total gross receipts are DPGR. The Treasury Department and the IRS chose to include a de minimis rule to reduce compliance costs and simplify tax filing relative to an alternative of no de minimis rule. The de minimis threshold modestly reduces compliance costs for businesses with relatively small amounts of non-DPGR or DPGR by allowing them to avoid allocating receipts between DPGR and non-DPGR activities. The de minimis threshold is unlikely to create any substantial effects on market activity because any change in the ratio of DPGR to non-DPGR will be localized around the threshold, meaning that the movement will be a small fraction of receipts to get below the de minimis threshold.

The thresholds provided in the proposed regulations are based on the thresholds set forth in § 1.199–1(d)(3). The Treasury Department and the IRS maintained the de minimis rule from the final regulations under former section 199 because the 2018 Act directed that regulations concerning the section 199A(g) deduction be based on the regulations applicable to Cooperatives and their patrons under former section 199. The Treasury

Department and the IRS considered changes in the de minimis provisions but determined that changing these from provisions that were previously available would lead to taxpayer confusion. Because the de minimis provision exempts taxpayers from having to perform certain allocations, the Treasury Department and the IRS do not have sufficient information on taxpayers' use of this exemption under former section 199 to perform a quantitative analysis of the impacts of the de minimis provision.

The Treasury Department and the IRS solicit comments on the de minimis thresholds and particularly request comments that provide data, other evidence, and models that can enhance the rigor of the process by which such thresholds might be determined for the final regulations while maintaining consistency with the statute's directive that the thresholds be based on regulations issued under former section 199.

iv. Reporting Requirements

Proposed § 1.199A–7(c) and (d) provide that, when a patron conducts a trade or business that receives distributions from a Cooperative, the Cooperative is required to provide the patron with qualified items of income, gain, deduction, and loss and specified service trade or business (SSTB) determinations with respect to those distributions. This increases the compliance burden on such Cooperatives. However, in the absence of these proposed regulations, the burden for determination of the amount of distributions from a Cooperative that constitute qualified items of income, gain, deduction, and loss from a non-SSTB and an SSTB would lie with the patron. Because patrons are less well positioned to acquire the relevant information to determine whether distributions from a Cooperative are qualified items of income, gain, deduction, and loss and whether items that would otherwise qualify are from an SSTB, the Treasury Department and the IRS expect that these proposed regulations will reduce overall compliance costs relative to an alternative approach of not introducing a reporting requirement.

v. Allocation Safe Harbor

If a patron receives both qualified payments and payments that are not qualified payments in a qualified trade or business, the patron must allocate those items and related deductions using a reasonable method based on all of the facts and circumstances. The proposed regulations provide a safe harbor that allows patrons who receive qualified payments in addition to other income to use a simpler method to allocate business expenses and W–2 wages between qualified payments and other gross receipts to calculate the section 199A(b)(7) reduction to the section 199A(a) deduction. The safe harbor allocation method allows patrons to allocate by ratably apportioning business expenses and W–2 wages based on the proportion that the amount of qualified payments bears to the total gross receipts used to determine QBI. This safe harbor is available to patrons with taxable incomes below the threshold amounts set forth in section 199A(e)(2).

The Treasury Department and the IRS considered an alternative of not allowing a safe harbor but determined that a safe harbor could reduce compliance costs and simplify tax filing. The threshold was set at amounts set forth in section 199A(e)(2) to avoid a proliferation of thresholds applicable to taxpayers claiming a section 199A(a) deduction. Because the threshold amounts are relatively low, the Treasury Department and the IRS expect that the safe harbor would not distort business decisions or reduce revenue to any meaningful extent.

II. Paperwork Reduction Act

The collections of information in these proposed regulations are in proposed § 1.199A–7(c)(3), (d)(3), (f)(3), and (h)(3), as well as proposed § 1.199A–8(d)(3), (f), and (h)(3). The collections of information in proposed § 1.199A–7(c)(3), (d)(3), (f)(3), and (h)(3), as well as proposed § 1.199A–8(d)(3) and (h)(3) will be conducted through Form 1099–PATR, while the collection of information in proposed § 1.199A–8(f) will be conducted through Schedule K–1 to Form 1065. In 2018, the IRS released and invited comments on the draft of Form 1065, Schedule K–1. The IRS received no comments on the form during the comment period. Consequently, the IRS made the form available December 6, 2018 for use by the public. On February 26, 2019, the IRS invited comments on Form 1099–PATR and the comment period closed on April 29, 2019. The IRS plans to issue in the near term an additional notice with a thirty-day comment period on Form 1099–PATR. The IRS is contemplating making additional changes to those two forms as discussed below in these proposed regulations.

A. Collections of Information Conducted Through Form 1099–PATR

The collection of information in proposed § 1.199A–7(c)(3) requires the Cooperative to inform its patron of the amount of any distribution to the patron that constitutes qualified items of income, gain, deduction, and loss from a non-SSTB conducted directly by the Cooperative. Not all distributions to patrons are qualified items of income, gain, deduction, and loss because the source of the distribution may not be effectively connected with the conduct of a trade or business within the United States or may include interest income that is not properly allocable to the patron's trade or business. The Cooperative directly conducting the trade or business from which the distribution to the patron originates is in the best position to know how much of the distribution is qualified items of income, gain, deduction, and loss. The Cooperative is also in the best position to know if it is generating income from an SSTB. Accordingly, the collection of information is necessary for the patron to calculate correctly the patron's section 199A(a) deduction for the patron's trade or business.

The collection of information in proposed § 1.199A–7(d)(3) requires the Cooperative to inform its patron of the amount of any distributions to the patron that constitutes qualified items of income, gain, deduction, and loss from an SSTB conducted directly by the Cooperative. Accordingly, the collection of information is necessary for the patron to correctly calculate the patron's section 199A(a) deduction for the patron's qualified trade or business.

The collection of information in proposed § 1.199A–7(f)(3) is essential for the eligible taxpayer's calculation of the reduction in the eligible taxpayer's section 199A(a) deduction for the eligible taxpayer's trade or business that is required by section 199A(b)(7). Section 199A(g)(2)(A) requires the Specified Cooperative to identify the amount of qualified payments being distributed to an eligible taxpayer and identify the portion of the deduction allowed in a notice mailed to the eligible taxpayer during the payment period described in section 1382(d). Section 199A(b)(7) provides that an eligible taxpayer who receives qualified payments from a Specified Cooperative must reduce the eligible taxpayer's section 199A(a) deduction by an amount set forth in this section. Without the notice described in proposed § 1.199A–7(f)(3), the eligible taxpayer cannot calculate the reduction required by section 199A(b)(7).

The collection of information in proposed § 1.199A–8(d)(3) is necessitated by section 199A(g)(2)(A). Section 199A(g)(2)(A) permits a Specified Cooperative to pass through

an amount of its section 199A(g) deduction to an eligible taxpayer. The amount of the section 199A(g) deduction that the Specified Cooperative is permitted to pass through is an amount that is allocable to the QPAI generated from qualified payments distributed to the eligible taxpayer and identified by such cooperative in a written notice mailed to such taxpayer during the payment period described in section 1382(d). Without the notice required in proposed § 1.199A–8(d)(3) the eligible taxpayer would not know that the Specified Cooperative is passing a portion of its section 199A(g) deduction to the eligible taxpayer.

The collections of information in proposed §§ 1.199A–7(h)(3) and 1.199A–8(h)(3) are necessitated by a special transition rule in section 101 of the 2018 Act. Under this transition rule, the repeal of former section 199 for taxable years beginning after December 31, 2017, does not apply to a qualified payment received by a patron from a Specified Cooperative in a taxable year beginning after December 31, 2017, to the extent such qualified payment is attributable to QPAI with respect to which a deduction is allowable to the Specified Cooperative under former section 199 for a taxable year of the Specified Cooperative beginning before January 1, 2018. Such qualified payment remains subject to former section 199 and no deduction is allowed under section 199A(a) or (g) with respect to such qualified payment. Without these collections of information by the Specified Cooperative, the patron has no way of knowing that the patron is barred by the transition rule from using a qualified payment received that is QBI for the patron's trade or business to claim a section 199A(a) deduction for the patron's trade or business.

The collections of information in proposed § 1.199A–7(c)(3), (d)(3), (f)(3), and (h)(3) as well as proposed § 1.199A–8(d)(3) and (h)(3) are satisfied by providing information about qualified items of income, SSTB determinations, qualified payments, the section 199A(g) deduction, and the use of qualified payments tied to the former section 199 deduction, as applicable, on an attachment to or on the Form 1099–PATR (or any successor form) issued by the Cooperative to the patron, unless otherwise provided by the instructions to the Form.

For purposes of the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(d)) (PRA), the reporting burden associated with proposed § 1.199A–7(c)(3), (d)(3), (f)(3), and (h)(3) as well as proposed § 1.199A–8(d)(3) and (h)(3) will be reflected in the PRA Submission associated with Form 1099–PATR (OMB control number 1545–0118). As further discussed in this section, the estimated number of respondents for the reporting burden associated with these information collections is 9,000 based on 2017 tax filings.

B. Collections of Information Conducted Through Schedule K–1, Form 1065

The collection of information in proposed § 1.199A–8(f) is required by section 199A(g)(5)(B). This section allows a Specified Cooperative that is a partner in a partnership to use its allocable share of gross receipts and related deductions to calculate its section 199A(g) deduction. The proposed rules provide that the partnership must separately identify and report the allocable share of gross receipts and related deductions on or attached to the Schedule K–1 to the Form 1065 (or any successor form) issued to a Specified Cooperative partner, unless otherwise provided by the instructions to the Form. Without this reporting, the Specified Cooperative partner would not have the information necessary to calculate its section 199A(g) deduction from its activities with the partnership.

The Schedule K–1 to the Form 1065 will be modified to include a mechanism to report the Specified Cooperative partner's allocable share of gross receipts and related deductions. The collection of information in proposed § 1.199A–8(f) is satisfied when the partnership provides the required information to its Specified Cooperative partners on or attached to the Schedule K–1 of Form 1065 (or any successor form), unless otherwise provided by the instructions to the Form. For purposes of the PRA, the reporting burden associated with proposed § 1.199A–8(f) will be reflected in the PRA Submission associated with Form 1065 (OMB control number 1545–0123). As provided in this section, the estimated number of respondents for the reporting burden associated with these information collections is 407 based on 2017 tax filings.

C. Revised Tax Forms

The revised tax forms are as follows:

	New	Revision of existing form	Number of respondents
Form 1099–PATR		✓	9,000
Schedule K–1 (Form 1065)		✓	407

The current status of the PRA submissions related to the tax forms that will be revised as a result of the information collections in the proposed regulations is provided in the accompanying table. As described previously, the burdens associated with proposed § 1.199A–7(c)(3), (d)(3), (f)(3), and (h)(3) as well as proposed §§ 1.199A–8(d)(3) and (h)(3) will be included in the aggregated burden estimates for OMB control number 1545–0118, which represents a total estimated burden time of 509,895 hours and total estimated monetized costs of $44.733 million ($2018). The burdens associated with the information collection in proposed § 1.199A–8(f) will be included in the aggregated burden estimates for OMB control number 1545–0123, which represents a total estimated burden time for all forms and schedules of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017). The overall burden estimates provided for 1545–0118 and 1545–0123 are aggregate amounts that relate to all information collections associated with the applicable OMB control number.

No burden estimates specific to the forms affected by the proposed regulations are currently available. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. Those estimates would need to capture both changes made by the 2018 Act and those that arise out of discretionary authority exercised in the proposed regulations. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden. Proposed revisions to these forms that reflect the information collections contained in these proposed regulations

will be made available for public comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.htm* and will not be finalized until after these forms have been approved by OMB under the PRA.

Form	Type of filer	OMB No.(s)	Status
Form 1099–PATR	[Business (Legacy Model)]	1545–0118	Existing collection of information approved by OIRA on 6/3/2016. Public comments will be sought on a revised collection of information that will be submitted for OIRA review before 6/30/2019.
	Link: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201602-1545-024.		
Form 1065, Schedule K–1	Business (NEW Model)	1545–0123	Published in the **Federal Register** on 10/11/18. Public Comment period closed on 12/10/18. Approved by OIRA on 12/21/18.
	Link:https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.		

III. Regulatory Flexibility Act

As described in more detail in this section, pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. chapter 6, the Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact this rule would have on small entities.

A. Proposed § 1.199A–7(c)(3) and (d)(3)

Although proposed § 1.199A–7(c)(3) and (d)(3) will have an impact on a substantial number of small entities, the economic impact will not be significant. The IRS creates the Business Master File which contains data from Form 1120–C, U.S. Income Tax Return for Cooperative Associations. According to the Business Master File data, in 2017, the IRS received approximately 9,000 Forms 1120–C from Cooperatives. Under the North American Industry Classification System (NAICS), a Cooperative is considered a small entity if it has less than $750,000 in annual gross receipts. Approximately 4,050 (45 percent) of the 9,000 filers of Forms 1120–C reported annual gross receipts of less than $750,000. Therefore, a substantial number of small entities are affected by the requirements in proposed § 1.199A–7(c)(3) and (d)(3).

Proposed § 1.199A–7 provides rules similar to those provided in § 1.199A–6. In § 1.199A–6, relevant passthrough entities (RPEs) are not permitted to take the section 199A deduction but are required to determine and report the information necessary for their direct and indirect owners to determine their individual section 199A(a) deductions. Section 1.199A–6 requires RPEs to determine and report on or attach to the RPEs' Schedule K–1s to the Form 1065 for each trade or business in which the RPE was directly engaged four items: (1) The amount of QBI, (2) W–2 wages, (3) UBIA of qualified property, and (4) SSTBs.

Although Cooperatives are not RPEs, Cooperatives make distributions to patrons that such patrons are permitted to include in calculating their individual section 199A(a) deductions. Proposed § 1.199A–7(c) and (d) require the Cooperatives to determine and report to their patrons whether the distributions for which the Cooperatives take deductions under section 1382(b) and/or (c)(2), as applicable, constitute qualified items of income, gain, deduction, and loss and whether they are from an SSTB in which the Cooperative was directly engaged.

In TD 9847 the Treasury Department and the IRS determined that the reporting burden in § 1.199A–6 was estimated at 30 minutes to 20 hours, depending on individual circumstances, with an estimated average of 2.5 hours for all affected entities, regardless of size. The burden on entities with business receipts below $10 million was expected to be at the lower end of the range (30 minutes to 2.5 hours). The estimated compliance burden for passthrough entities that issue Schedules K–1 is $53 per hour. This estimate was derived from the Business Taxpayer Burden model developed by the IRS's Office of Research, Applied Analytics, and Statistics (RAAS), which relates time and out-of-pocket costs of business tax preparation, derived from survey data, to assets and receipts of affected taxpayers along with other relevant variables. *See* Tax Compliance Burden (John Guyton et al., July 2018) at *https://www.irs.gov/pub/irs-soi/d13315.pdf.* Thus, the annual aggregate burden on businesses with gross receipts below $10 million was estimated to be between $19.50 and $132.50 per business. The Treasury Department and the IRS determined in TD 9847 that the requirements in § 1.199A–6 imposed no significant economic impact on affected entities.

The reporting requirements under proposed § 1.199A–7(c)(3) and (d)(3) require Specified Cooperatives to report only two of the four pieces of information RPEs are required to report under proposed § 1.199A–6: The amount of qualified items of income, gain, deduction, and loss and whether the distributions are from an SSTB in which the Cooperative was directly engaged.

The burden imposed by proposed § 1.199A–7(c)(3) and (d)(3) only occurs when a Cooperative has net income that it may distribute to its patrons such that the income will qualify for the income tax deductions under section 1382(b) and/or (c), as applicable. With respect to this net income, Cooperatives already know the source of their income and deductions without which information they would not be able to determine the correct distributions to their patrons and to claim the income tax deduction for these distributions under section 1382(b) and/or (c)(2), as applicable. Finally, assuming that the approximately 4,050 filers of Forms 1120–C that reported annual gross receipts of less than $750,000 in 2017 and that each business incurred half of the higher figure of $132.50 ($66.25) determined for the § 1.199A–6 regulations to satisfy the reporting requirements under proposed § 1.199A–7(c)(3) and (d)(3), the annual burden imposed by the reporting requirements would not exceed $66.25 per business. Accordingly, the Treasury Department and the IRS conclude that the requirements in proposed § 1.199A–7(c)(3) and (d)(3) will not impose a significant economic impact on small entities.

B. Proposed §§ 1.199A–7(h)(3) and 1.199A–8(h)(3)

Although proposed §§ 1.199A–7(h)(3) and 1.199A–8(h)(3) will have an impact on a substantial number of small entities, this economic impact will not be significant. As previously noted, in 2017, approximately 45 percent of Cooperatives reported on Forms 1120–C gross receipts of less than $750,000. Therefore, a substantial number of small entities are affected by proposed §§ 1.199A–7(h)(3) and 1.199A–8(h)(3).

Proposed §§ 1.199A–7(h)(3) and 1.199A–8(h)(3) requires Cooperatives to notify patrons if, pursuant to the transition rule in section 101 of the 2018 Act, the patron is barred from using certain qualified payments from a Cooperative to claim a section 199A(a) deduction in a taxable year because these qualified payments are attributable to QPAI with respect to which a deduction is allowable to the Cooperative under former section 199 in a taxable year beginning before January 1, 2018. The Cooperative knows which patrons are impacted since, in order to claim its deduction under former section 199, the Cooperative must identify which qualified payments to use. The Treasury Department and the IRS estimate that the annual burden imposed by the requirement in proposed §§ 1.199A–7(h)(3) and 1.199A–8(h)(3) will be far less than the $66.25 per business estimated for the requirements in proposed §§ 1.199A–7(c)(3) and 1.199A–8(c)(3) discussed above, since the Cooperatives know which patrons are impacted and the reporting is limited to informing these patrons that they cannot use such qualified payments to calculate their section 199A(a) deduction.

In addition, absent notice from the Cooperatives, patrons would have no way of determining whether they were barred from claiming the section 199A(a) deduction using such qualified payments. Finally, Cooperatives are not able to claim a deduction under former section 199 for taxable years beginning after December 31, 2017. Therefore, the reporting required by proposed §§ 1.199A–7(h)(3) and 1.199A–8(h)(3) will be for a short duration and have a limited impact on Cooperatives. Accordingly, for all these reasons, the requirements in proposed §§ 1.199A–7(h)(3) and 1.199A–8(h)(3) will not impose a significant economic impact on small entities.

C. Proposed §§ 1.199A–7(f)(3) and 1.199A–8(d)(3)

Sections 1.199A–7(f)(3) and 1.199A–8(d)(3) will not have a significant economic impact on a substantial number of small entities. This claim is based on the fact that this rulemaking will impact a population of Specified Cooperatives, only a small percentage of which are considered small entities. According to the Business Master File filing data from the transcribed fields from the Forms 1120–C for 2017, of the approximately 9,000 Forms 1120–C filed by Cooperatives, approximately 2,000 filers identified their Cooperatives as involving agriculture or horticulture using the NAICS. As noted previously, a Cooperative is considered small if it reports less than $750,000 in annual gross receipts. Of the 2,000 filers of Forms 1120–C identifying as Specified Cooperatives, only 175 filers (less than 1 percent) reported annual gross receipts of less than $750,000. Accordingly, proposed §§ 1.199A–7(f)(3) and 1.199A–8(d)(3) will not impose a significant economic impact on a substantial number of small entities.

D. Proposed § 1.199A–8(f)

Although proposed § 1.199A–8(f) will have an impact on a substantial number of small entities, this impact will not be economically significant. According to the Business Master File filing data from the transcribed fields from the Forms 1065 for 2017, the IRS estimates that there were 3,954,000 partnerships reporting their partners' share of partnership items on Schedules K–1 (Form 1065). The IRS also identified approximately 407 different partnerships that issued a Schedule K–1 to 680 different Cooperatives in 2017. The IRS does not have information as to whether the 680 Cooperatives all qualified as Specified Cooperatives.

Of the 407 different partnerships, the IRS determined that 344 of the partnerships conducted activities in 2017 that would have required the partnerships to file under proposed § 1.199A–8(f). The IRS does not have sufficient data to determine the type of business activities of the remaining 63 partnerships. To be as comprehensive and transparent as possible in analyzing the potential impact of the proposed regulations, it is assumed that all 63 of these partnerships would be required to file under proposed § 1.199A–8(f) and would be considered small entities.

Of the 344 partnerships identified as having both issued a Schedule K–1 to a Cooperative and conducting eligible activities in 2017, the IRS determined that 158 of these partnerships conducted activities for which the Small Business Administration (SBA) uses the number of employees to determine if an entity is a small entity using the NAICS. The IRS determined that 153 of these 158 partnerships would be small entities, while five would not be small entities based on the reported number of Forms W–2 filed in connection with the Forms 1065 the partnerships filed in 2017.

The SBA uses income to determine if an entity is a small entity for the reported business activities of the remaining 186 partnerships using the NAICS. Based upon the reported income for 2017, 140 of the remaining 186 partnerships are small entities, while 46 partnerships are not small entities. Therefore, a substantial number of small entities are affected by requirements in proposed § 1.199A–8(f).

The economic impact of proposed § 1.199A–8(f), however, will not be significant because the information required to be reported is gross receipts and related deductions. This information is readily available to each partnership and already known for the purpose of determining tax obligations. Because the information required to be reported is already available and familiar to each partnership, the reporting required by proposed § 1.199A–8(f) will not impose a significant economic impact on small entities.

Accordingly, the Treasury Department and the IRS hereby certify that the proposed regulations will not have a significant economic impact on a substantial number of small entities. We invite public comments with respect to this conclusion.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (titled *Federalism*) prohibits an agency from publishing any rule that has federalism

implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications, and does not impose substantial direct compliance costs on state and local governments or preempt state law, within the meaning of the Executive Order.

Comments and Requests for a Public Hearing

The Treasury Department and the IRS request comments on all aspects of the proposed rules. Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Statement of Availability of IRS Documents

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

Drafting Information

The principal author of these proposed regulations is Theresa Melchiorre, Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

■ Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–136459–09) published in the **Federal Register** (80 FR 51978) on August 27, 2015, is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by:

■ 1. Removing the entries for §§ 1.199–0 through 1.199–9, and

■ 2. Adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 1.199A–7 also issued under 26 U.S.C. 199A(f)(4) and (g)(6).

Section 1.199A–8 also issued under 26 U.S.C. 199A(g)(6).

Section 1.199A–9 also issued under 26 U.S.C. 199A(g)(6).

Section 1.199A–10 also issued under 26 U.S.C. 199A(g)(6).

Section 1.199A–11 also issued under 26 U.S.C. 199A(g)(6).

Section 1.199A–12 also issued under 26 U.S.C. 199A(g)(6).

* * * * *

§§ 1.199–0 through 1.199–9 [Removed]

■ **Par. 2.** Sections 1.199–0 through 1.199–9 are removed.

■ **Par. 3.** Sections 1.199A–7 through 1.199A–12 are added to read as follows:

Sec.

* * * * *

1.199A–7 Section 199A(a) Rules for Cooperatives and their Patrons.

1.199A–8 Deduction for income attributable to domestic production activities of specified agricultural or horticultural cooperatives.

1.199A–9 Domestic production gross receipts.

1.199A–10 Allocation of costs of goods sold (COGS) and other deductions to domestic production gross receipts (DPGR), and other rules.

1.199A–11 Wage limitation for the section 199A(g) deduction.

1.199A–12 Expanded affiliated groups.

* * * * *

§ 1.199A–7 Section 199A(a) Rules for Cooperatives and their Patrons.

(a) *Overview*—(1) *In general.* This section provides guidance and special rules on the application of the rules of §§ 1.199A–1 through 1.199A–6 regarding the deduction for qualified business income (QBI) under section 199A(a) (section 199A(a) deduction) of the Internal Revenue Code (Code) by patrons (patrons) of cooperatives to which Part I of subchapter T of chapter 1 of subtitle A of the Code applies (Cooperatives). Unless otherwise provided in this section, all of the rules in §§ 1.199A–1 through 1.199A–6 relating to calculating the section 199A(a) deduction apply to patrons and Cooperatives. Paragraph (b) of this section provides special rules for patrons relating to trades or businesses. Paragraph (c) of this section provides special rules for patrons and Cooperatives relating to the definition of QBI. Paragraph (d) of this section provides special rules for patrons and Cooperatives relating to specified service trades or businesses (SSTBs). Paragraph (e) of this section provides special rules for patrons relating to the statutory limitations based on W–2 wages and unadjusted basis immediately after acquisition (UBIA) of qualified property. Paragraph (f) of this section provides special rules for specified agricultural or horticultural cooperatives (Specified Cooperatives) and paragraph (g) of this section provides examples for Specified Cooperatives and their patrons. Paragraph (h) of this section sets forth the applicability date of this section and a special transition rule relating to Specified Cooperatives and their patrons.

(2) *At patron level.* The section 199A(a) deduction is applied at the patron level, and patrons who are individuals (as defined in § 1.199A–1(a)(2)) may take the section 199A(a) deduction.

(3) *Definitions.* For purposes of section 199A and § 1.199A–7, the following definitions apply—

(i) *Individual* is defined in § 1.199A–1(a)(2).

(ii) *Patron* is defined in § 1.1388–1(e).

(iii) *Patronage and nonpatronage* is defined in § 1.1388–1(f).

(iv) *Relevant Passthrough Entity (RPE)* is defined in § 1.199A–1(a)(9).

(v) *Qualified payment* is defined in § 1.199A–8(d)(2)(ii).

(vi) *Specified Cooperative* is defined in § 1.199A–8(a)(2) and is a subset of Cooperatives defined in § 1.199A–7(a)(1).

(b) *Trade or business.* A patron (whether the patron is an RPE or an individual) must determine whether it has one or more trades or businesses that it directly conducts as defined in § 1.199A–1(b)(14). To the extent a patron operating a trade or business has income directly from that business, the patron must follow the rules of §§ 1.199A–1 through 1.199A–6 to calculate the section 199A deduction. Patronage dividends or similar payments are considered to be generated from the trade or business the Cooperative conducts on behalf of or with the patron, and are tested by the Cooperative at its trade or business level. A patron that receives patronage dividends or similar payments, as described in paragraph (c)(1) of this section, from a Cooperative must follow the rules of paragraphs (c) through (e) of this section to calculate the section 199A deduction.

(c) *Qualified Business Income*—(1) *In general.* QBI means the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business as determined under the rules of § 1.199A–3(b). A qualified item of income includes distributions for which the Cooperative is allowed a deduction under section 1382(b) and (c)(2) (including patronage dividends or similar payments, such as money, property, qualified written notices of allocations, and qualified per-unit retain certificates, as well as money or property paid in redemption of a nonqualified written notice of allocation (collectively patronage dividends or similar payments)), provided such distribution is otherwise a qualified item of income, gain, deduction, or loss. *See* special rule in paragraph (d)(3) of this section relating to SSTBs that may affect QBI.

(2) *QBI determinations made by patron.* A patron must determine QBI for each trade or business it directly conducts. In situations where the patron receives distributions described in paragraph (c)(1) of this section, the Cooperative must determine whether those distributions include qualified items of income, gain, deduction, and loss. These distributions may be included in the QBI of the patron's trade or business:

(i) To the extent that those payments are related to the patron's trade or business;

(ii) Are qualified items of income, gain, deduction, and loss at the Cooperative's trade or business level;

(iii) Are not income from an SSTB at the Cooperative's trade or business level (except as permitted by the threshold rules (*see* § 1.199A–5(a)(2)); and

(iv) Provided the patron receives certain information from the Cooperative about these payments as provided in paragraphs (c)(3) and (d)(3) of this section.

(3) *Qualified items of income, gain, deduction, and loss determinations made and reported by Cooperatives.* In the case of a Cooperative that makes distributions described in paragraph (c)(1) of this section to a patron, the Cooperative must determine the amount of qualified items of income, gain, deduction, and loss in those distributions. Pursuant to this paragraph (c)(3), the Cooperative must report the amounts of qualified items with respect to any non-SSTB of the Cooperative in the distributions made to the patron on an attachment to or on the Form 1099–PATR, Taxable Distributions Received From Cooperatives (Form 1099–PATR), (or any successor form) issued by the Cooperative to the patron, unless otherwise provided by the instructions to the Form. If the Cooperative does not report on or before the due date of the Form 1099–PATR the amount of such qualified items of income, gain, deduction, and loss in the distributions to the patron, the amount of distributions from the Cooperative that may be included in the patron's QBI is presumed to be zero. *See* special rule in paragraph (d)(3) of this section relating to reporting of qualified items of income, gain, deduction, and loss with respect to SSTBs of the Cooperative.

(d) *Specified Service Trades or Businesses*—(1) *In general.* This section provides guidance on the determination of SSTBs. Unless otherwise provided in this section, all of the rules in § 1.199A–5 relating to SSTBs apply to patrons of Cooperatives.

(2) *SSTB determinations made by patron.* A patron (whether an RPE or an individual) must determine whether each trade or business it directly conducts is an SSTB.

(3) *SSTB determinations made and reported by Cooperatives.* In the case of a Cooperative that makes distributions described in paragraph (c)(1) of this section to a patron, the Cooperative must determine whether the distributions from the Cooperative include items of income, gain, deduction, and loss from an SSTB directly conducted by the Cooperative, and whether such items are qualified items of income, gain, deduction, and loss with respect to such SSTB. The Cooperative must report to the patron the amount of income, gain, deduction, and loss in the distributions that is a qualified item of income, gain, deduction, and loss with respect to such SSTB. The Cooperative must report the amount on an attachment to or on the Form 1099–PATR (or any successor form) issued by the Cooperative to the patron, unless otherwise provided by the instructions to the Form. If the Cooperative does not report the amount on or before the due date of the Form 1099–PATR, then only the amount that a Cooperative reports as qualified items of income, gain, deduction, and loss under § 1.199A–7(c)(3) may be included in the patron's QBI, and the remaining amount of distributions from the Cooperative that may be included in the patron's QBI is presumed to be zero.

(e) *W–2 wages and unadjusted basis immediately after acquisition of qualified property*—(1) *In general.* This section provides guidance on calculating a trade or business's W–2 wages and the UBIA of qualified property properly allocable to QBI.

(2) *Determinations made by patron.* The determination of W–2 wages and UBIA of qualified property must be made for each trade or business by the patron (whether an RPE or individual) that directly conducts the trade or business before applying the aggregation rules of § 1.199A–4. Unlike RPEs, Cooperatives do not allocate their W–2 wages and UBIA of qualified property to patrons.

(f) *Special rules for patrons of Specified Cooperatives*—(1) *Section 199A(b)(7) reduction.* A patron of a Specified Cooperative that receives a qualified payment must reduce its section 199A(a) deduction as provided in § 1.199A–1(e)(7). This reduction applies whether the Specified Cooperative passes through all, some, or none of the Specified Cooperative's section 199A(g) deduction to the patron in that taxable year. The proposed rules relating to the section 199A(g) deduction can be found in §§ 1.199A–8 through 1.199A–12.

(2) *Deduction Calculation*—(i) *Allocation method.* If in any taxable year, a patron receives both qualified payments and income that is not a qualified payment in a trade or business, the patron must allocate those items and related deductions using a reasonable method based on all the facts and circumstances. Different reasonable methods may be used for different items and related deductions of income, gain, deduction, and loss. The chosen reasonable method for each item must be consistently applied from one taxable year of the patron to another, and must clearly reflect the income and expenses of each trade or business. The overall combination of methods must also be reasonable based on all the facts and circumstances. The books and records maintained for a trade or business must be consistent with any allocations under this paragraph (f)(2)(i).

(ii) *Safe harbor.* A patron with taxable income under the threshold amount set forth in section 199A(e)(2) is eligible to use the safe harbor set forth in this paragraph (f)(2)(ii) instead of the allocation method set forth in paragraph (f)(2)(i) of this section for any taxable year in which the patron receives qualified payments and income from other than qualified payments in its trade or business. Under the safe harbor the patron may apportion its deductions and W–2 wages ratably between income from qualified payments and income from other than qualified payments for purposes of calculating the reduction in paragraph (f)(1) of this section. Accordingly, the amount of deductions apportioned to determine QBI allocable to qualified payments is equal to the proportion of the total deductions that the amount of qualified payments bears

to total gross receipts used to determine QBI. The same proportion applies to determine the amount of W–2 wages allocable to the portion of the trade or business that received qualified payments.

(3) *Qualified payments notice requirement.* A Specified Cooperative must report the amount of the qualified payments made to the eligible taxpayer, as defined in section 199A(g)(2)(D), on an attachment to or on the Form 1099–PATR (or any successor form) issued by the Cooperative to the patron, unless otherwise provided by the instructions to the Form.

(g) *Examples.* The following examples illustrate the provisions of paragraph (f) of this section. For purposes of these examples, assume that the Specified Cooperative has satisfied the applicable written notice requirements in paragraphs (c)(3), (d)(3) and (f)(3) of this section.

(1) *Example 1. Patron of Specified Cooperative with W–2 wages.* (i) P, a grain farmer and patron of nonexempt Specified Cooperative (C), delivered to C during 2018 2% of all grain marketed through C during such year. During 2019, P receives $20,000 in patronage dividends and $1,000 of allocated section 199A(g) deduction from C related to the grain delivered to C during 2018.

(ii) P has taxable income of $75,000 for 2019 (determined without regard to section 199A) and has a filing status of married filing jointly. P's QBI related to its grain trade or business for 2019 is $50,000, which consists of gross receipts of $150,000 from sales to an independent grain elevator, per-unit retain allocations received from C during 2019 of $80,000, patronage dividends received from C during 2019 related to C's 2018 net earnings of $20,000, and expenses of $200,000 (including $50,000 of W–2 wages).

(iii) The portion of QBI from P's grain trade or business related to qualified payments received from C during 2019 is $10,000, which consists of per-unit retain allocations received from C during 2019 of $80,000, patronage dividends received from C during 2019 related to C's 2018 net earnings of $20,000, and properly allocable expenses of $90,000 (including $25,000 of W–2 wages).

(iv) P's deductible amount related to the grain trade or business is 20% of QBI ($10,000) reduced by the lesser of 9% of QBI related to qualified payments received from C ($900) or 50% of W–2 wages related to qualified payments received from C ($12,500), or $9,100. As P does not have any other trades or businesses, the combined QBI amount is also $9,100.

(v) P's deduction under section 199A for 2019 is $10,100, which consists of the combined QBI amount of $9,100, plus P's deduction passed through from C of $1,000.

(2) *Example 2. Patron of Specified Cooperative without W–2 wages.* (i) C and P have the same facts for 2018 and 2019 as *Example 1,* except that P has expenses of $200,000 that include zero W–2 wages during 2019.

(ii) P's deductible amount related to the grain trade or business is 20% of QBI ($10,000) reduced by the lesser of 9% of QBI related to qualified payments received from C ($900) or 50% of W–2 wages related to qualified payments received from C ($0), or $10,000.

(iii) P's deduction under section 199A for 2019 is $11,000, which consists of the combined QBI amount of $10,000, plus P's deduction passed through from C of $1,000.

(3) *Example 3. Patron of Specified Cooperative—Qualified Payments do not equal QBI and no section 199A(g) passthrough.* (i) P, a grain farmer and a patron of a nonexempt Specified Cooperative (C), during 2019, receives $60,000 in patronage dividends, $100,000 in per-unit retain allocations, and $0 of allocated section 199A(g) deduction from C related to the grain delivered to C. C notifies P that only $150,000 of the patronage dividends and per-unit retain allocations are qualified payments because $10,000 of the payments are not attributable to C's qualified production activities income (QPAI).

(ii) P has taxable income of $90,000 (determined without regard to section 199A) and has a filing status of married filing jointly. P's QBI related to its grain trade or business is $45,000, which consists of gross receipts of $95,000 from sales to an independent grain elevator, plus $160,000 from C (all payments from C qualify as qualified items of income, gain, deduction, and loss), less expenses of $210,000 (including $30,000 of W–2 wages).

(iii) The portion of QBI from P's grain trade or business related to qualified payments received from C is $25,000, which consists of the qualified payments received from C of $150,000, less the properly allocable expenses of $125,000 (including $18,000 of W–2 wages), which were determined using a reasonable method under paragraph (f)(2)(ii) of this section.

(iv) P's patron reduction is $2,250, which is the lesser of 9% of QBI related to qualified payments received from C, $2,250 (9% × $25,000), or 50% of W–2 wages related to qualified payments received from C, $9,000 (50% × $18,000). As P does not have any other trades or businesses, the combined QBI amount is $6,750 (20% of P's total QBI, $9,000 (20% × $45,000), reduced by the patron reduction of $2,250).

(v) P's deduction under section 199A is $6,750, which consists of the combined QBI amount of $6,750.

(4) *Example 4. Patron of Specified Cooperative—Reasonable Method under paragraph (f)(2)(ii) of this section.* P is a grain farmer that has $45,000 of QBI related to P's grain trade or business in 2019. P's QBI consists of $105,000 of sales to an independent grain elevator, $100,000 of per-unit retain allocations, and $50,000 of patronage dividends from a nonexempt Specified Cooperative (C), for which C reports $150,000 of qualified payments to P as required by paragraph (f)(3) of this section. P's grain trade or business has $210,000 of expenses (including $30,000 of W–2 wages). P delivered 65x bushels of grain to C and sold 35x bushels of comparable grain to the independent grain elevator. To allocate the expenses between qualified payments ($150,000) and other income ($105,000), P compares the bushels of grain delivered to C (65x) to the total bushels of grain delivered to C and sold to the independent grain elevator (100x). P determines $136,500 (65% × $210,000) of expenses (including $19,500 of W–2 wages) are properly allocable to the qualified payments. The portion of QBI from P's grain trade or business related to qualified payments received from C is $13,500, which consists of qualified payments of $150,000 less the properly allocable expenses of $136,500 (including $19,500 of W–2 wages). P's method of allocating expenses is a reasonable method under paragraph (f)(2)(ii) of this section.

(5) *Example 5. Patron of Specified Cooperative using safe harbor to allocate.* (i) P is a grain farmer with taxable income of $100,000 for 2019 (determined without regard to section 199A) and has a filing status of married filing jointly. P's QBI related to P's grain trade or business for 2019 is $50,000, which consists of gross receipts of $180,000 from sales to an independent grain elevator, per-unit retain allocations received from a Specified Cooperative (C) during 2019 of $15,000, patronage dividends received from C during 2019 related to C's 2018 net earnings of $5,000, and expenses of $150,000 (including $50,000 of W–2 wages). C also passed through $1,800 of the section 199A(g) deduction to P, which related to the grain delivered by P to the Specified Cooperative during 2018. P uses the safe harbor in paragraph (f)(2)(iii) of this section to determine the expenses (including W–2 wages) allocable to the qualified payments.

(ii) Using the safe harbor to allocate P's $150,000 of expenses, P allocates $15,000 of the expenses to the qualified payments ($150,000 of expenses multiplied by the ratio (0.10) of qualified payments ($20,000) to total gross receipts ($200,000)). Using the same ratio, P also determines there are $5,000 of W–2 wages allocable ($50,000 multiplied by 0.10) to the qualified payments.

(iii) The portion of QBI from P's grain trade or business related to qualified payments received from C during 2019 is $5,000, which consists of per-unit retain allocations received from C during 2019 of $15,000, patronage dividends of $5,000, and properly allocable expenses of $15,000 (including $5,000 of W–2 wages).

(iv) P's QBI related to the grain trade or business is 20% of QBI ($10,000) reduced by the lesser of 9% of QBI related to qualified payments received from C ($450) or 50% of W–2 wages related to qualified payments received from C ($2,500), or $9,550. As P does not have any other trades or businesses, the combined QBI amount is also $9,550.

(v) P's deduction under section 199A for 2019 is $11,350, which consists of the combined QBI amount of $9,550, plus P's deduction passed through from C of $1,800.

(h) *Effective/Applicability date*—(1) *General rule.* Except as provided in paragraph (h)(2) of this section, the provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is

published in the **Federal Register**. Taxpayers, however, may rely on these regulations until that date, but only if the taxpayers apply the rules in their entirety and in a consistent manner.

(2) *Transition rule for qualified payments of patrons of Cooperatives.* No deductions under section 199A are allowed to patrons for any qualified payments that are attributable to QPAI with respect to which a deduction is allowable to the Specified Cooperative under section 199 as in effect on and before December 31, 2017, for a taxable year of the Specified Cooperative beginning before January 1, 2018.

(3) *Notice from the Cooperative.* If a patron of a Cooperative cannot claim a deduction under section 199A for any qualified payments described in the transition rule set forth in paragraph (h)(2) of this section, the Cooperative must report this information on an attachment to or on the Form 1099–PATR (or any successor form) issued by the Cooperative to the patron, unless otherwise provided by the instructions to the Form.

§ 1.199A–8 Deduction for income attributable to domestic production activities of specified agricultural or horticultural cooperatives.

(a) *Overview*—(1) *In general.* This section provides rules relating to the deduction for income attributable to domestic production activities of a specified agricultural or horticultural cooperative (Specified Cooperative). This paragraph (a) provides an overview and definitions of certain terms. Paragraph (b) of this section provides rules explaining the steps a nonexempt Specified Cooperative performs to calculate its section 199A(g) deduction and includes definitions of relevant terms. Paragraph (c) of this section provides rules explaining the steps an exempt Specified Cooperative performs to calculate its section 199A(g) deduction. Paragraph (d) of this section provides rules for Specified Cooperatives passing through the section 199A(g) deduction to patrons. Paragraph (e) of this section provides examples that illustrate the provisions of paragraphs (b), (c), and (d) of this section. Paragraph (f) of this section provides guidance for Specified Cooperatives that are partners in a partnership. Paragraph (g) of this section provides guidance on the recapture of a claimed section 199A(g) deduction. Paragraph (h) of this section provides effective dates. For additional rules addressing an expanded affiliated group (EAG) *see* § 1.199A–12. The principles of this section apply to the EAG rules in § 1.199A–12.

(2) *Specified Cooperative*—(i) *In general.* Specified Cooperative means a cooperative to which Part I of subchapter T of chapter 1 of subtitle A of the Internal Revenue Code (Code) applies and which—

(A) Manufactures, produces, grows, or extracts (MPGE) in whole or significant part within the United States any agricultural or horticultural product, or

(B) Is engaged in the marketing of agricultural or horticultural products that have been MPGE in whole or significant part within the United States by the patrons of the cooperative.

(ii) *Additional rules.* See § 1.199A–9 for rules to determine if a Specified Cooperative has MPGE an agricultural or horticultural product in whole or significant part within the United States.

(iii) *Types of Specified Cooperatives.* A Specified Cooperative that is qualified as a farmer's cooperative organization under section 521 is an *exempt Specified Cooperative,* while a Specified Cooperative not so qualified is a *nonexempt Specified Cooperative.*

(3) *Patron* is defined in § 1.1388–1(e).

(4) *Agricultural or horticultural products* are agricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed or manufactured products thereof within the meaning of the Cooperative Marketing Act of 1926, 44 Stat. 802 (1926). Agricultural or horticultural products also include aquatic products that are farmed whether by an exempt or a nonexempt Specified Cooperative. In addition, agricultural or horticultural products include fertilizer, diesel fuel, and other supplies used in agricultural or horticultural production that are MPGE by a Specified Cooperative. Agricultural or horticultural products, however, do not include intangible property (other than as provided in the exception in § 1.199A–9(b)(2)); for example, an agricultural or horticultural product includes a seed that is grown, but does not include the intangible property right to reproduce a seed for sale. This exclusion of intangible property does not apply to intangible characteristics of any particular agricultural or horticultural product. For example, gross receipts from the sale of different varieties of oranges would all qualify as DPGR from the disposition of agricultural or horticultural products (assuming all other requirements of section 199A(g) are met). However, gross receipts from the license of the right to produce and sell a certain variety of an orange would be considered separate from the orange and not from an agricultural or horticultural product.

(b) *Steps for a nonexempt Specified Cooperative in calculating deduction*—(1) *In general.* Except as provided in paragraph (c)(3) of this section, this paragraph (b) applies only to nonexempt Specified Cooperatives.

(2) *Step 1—Gross receipts and related deductions*—(i) *Identify.* To determine the section 199A(g) deduction, a Specified Cooperative first identifies its patronage and nonpatronage gross receipts and related cost of goods sold (COGS), deductible expenses, W–2 wages, etc. (deductions) and allocates them between patronage and nonpatronage. A single definition for the term *patronage and nonpatronage* is found in § 1.1388–1(f).

(ii) *Applicable gross receipts and deductions.* For all purposes of the section 199A(g) deduction, a Specified Cooperative can use only patronage gross receipts and related deductions to calculate qualified production activities income (QPAI) as defined in paragraph (b)(4)(ii) of this section, oil-related QPAI as defined in paragraph (b)(7)(ii) of this section, or the W–2 wage limitation in paragraph (b)(5)(ii)(B) of this section. A Specified Cooperative cannot use its nonpatronage gross receipts and related deductions to calculate its section 199A(g) deduction.

(iii) *Gross receipts* are the Specified Cooperative's receipts for the taxable year that are recognized under the Specified Cooperative's methods of accounting used for Federal income tax purposes for the taxable year. See § 1.199A–12 if the gross receipts are recognized in an intercompany transaction within the meaning of § 1.1502–13. Gross receipts include total sales (net of returns and allowances) and all amounts received for services. In addition, gross receipts include any income from investments and from incidental or outside sources. For example, gross receipts include interest (except interest under section 103 but including original issue discount), dividends, rents, royalties, and annuities, regardless of whether the amounts are derived in the ordinary course of the Specified Cooperative's trade or business. Gross receipts are not reduced by COGS or by the cost of property sold if such property is described in section 1221(a)(1), (2), (3), (4), or (5). Finally, gross receipts do not include amounts received by the Specified Cooperative with respect to sales tax or other similar state or local taxes if, under the applicable state or local law, the tax is legally imposed on

the purchaser of the good or service and the Specified Cooperative merely collects and remits the tax to the taxing authority. If, in contrast, the tax is imposed on the Specified Cooperative under the applicable law, then gross receipts include the amounts received that are allocable to the payment of such tax.

(3) *Step 2—Determine gross receipts that are DPGR*—(i) *In general.* A Specified Cooperative examines its patronage gross receipts to determine which of these are DPGR. A Specified Cooperative does not use nonpatronage gross receipts to determine DPGR.

(ii) *DPGR* are the gross receipts of the Specified Cooperative that are derived from any lease, rental, license, sale, exchange, or other disposition of an agricultural or horticultural product that is MPGE by the Specified Cooperative or its patrons in whole or significant part within the United States. DPGR does not include gross receipts derived from services or the lease, rental, license, sale, exchange, or other disposition of land unless a de minimis or other exception applies. See § 1.199A–9 for additional rules on determining if gross receipts are DPGR.

(4) *Step 3—Determine QPAI*—(i) *In general.* A Specified Cooperative determines QPAI from patronage DPGR and patronage deductions identified in paragraphs (b)(3)(ii) and (b)(2)(i) of this section, respectively. A Specified Cooperative does not use nonpatronage gross receipts or deductions to determine QPAI.

(ii) *QPAI* for the taxable year means an amount equal to the excess (if any) of—

(A) DPGR for the taxable year, over

(B) The sum of—

(*1*) COGS that are allocable to DPGR, and

(*2*) Other expenses, losses, or deductions (other than the section 199A(g) deduction) that are properly allocable to DPGR.

(C) *QPAI computational rules.* QPAI is computed without taking into account the section 199A(g) deduction or any deduction allowed under section 1382(b). *See* § 1.199A–10 for additional rules on calculating QPAI.

(5) *Step 4—Calculate deduction*—(i) *In general.* From QPAI and taxable income, a Specified Cooperative calculates its section 199A(g) deduction as provided in paragraph (b)(5)(ii) of this section.

(ii) *Deduction*—(A) *In general.* A Specified Cooperative is allowed a deduction equal to 9 percent of the lesser of—

(*1*) QPAI of the Specified Cooperative for the taxable year, or

(*2*) Taxable income of the Specified Cooperative for the taxable year.

(B) *W–2 wage limitation.* The deduction allowed under paragraph (b)(5)(ii)(A) of this section for any taxable year cannot exceed 50 percent of the patronage W–2 wages attributable to DPGR for the taxable year. *See* § 1.199A–11 for additional rules on calculating the patronage W–2 wage limitation.

(C) *Taxable income.* Taxable income is defined in section 1382 and § 1.1382–1 and § 1.1382–2. For purposes of determining the amount of the deduction allowed under paragraph (b)(5)(ii) of this section, taxable income is limited to taxable income and related deductions from patronage sources. Patronage net operating losses (NOLs) reduce taxable income. Taxable income is computed without taking into account the section 199A(g) deduction or any deduction allowable under section 1382(b). Taxable income is determined using the same method of accounting used to determine distributions under section 1382(b) and qualified payments to eligible taxpayers.

(6) *Use of patronage section 199A(g) deduction.* Except as provided in § 1.199A–12(c)(2) related to the rules for EAGs, the patronage section 199A(g) deduction cannot create or increase a patronage or nonpatronage NOL or the amount of a patronage or nonpatronage NOL carryover or carryback, if applicable, in accordance with section 172. A patronage section 199A(g) deduction can be applied only against patronage income and deductions. A patronage section 199A(g) deduction that is not used in the appropriate taxable year is lost.

(7) *Special rules for nonexempt Specified Cooperatives that have oil-related QPAI*—(i) *Reduction of section 199A(g) deduction.* If a Specified Cooperative has oil-related QPAI for any taxable year, the amount otherwise allowable as a deduction under paragraph (b)(5)(ii) of this section must be reduced by 3 percent of the least of—

(A) Oil-related QPAI of the Specified Cooperative for the taxable year,

(B) QPAI of the Specified Cooperative for the taxable year, or

(C) Taxable income of the Specified Cooperative for the taxable year.

(ii) *Oil-related QPAI* means, for any taxable year, the patronage QPAI that is attributable to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof (within the meaning of section 927(a)(2)(C), as in effect before its repeal) during such taxable year. Oil-related QPAI for any taxable year is an amount equal to the excess (if any) of patronage DPGR derived from the production, refining or processing of oil, gas, or any primary product thereof (oil-related DPGR) over the sum of—

(A) COGS of the Specified Cooperative that is allocable to such receipts; and

(B) Other expenses, losses, or deductions (other than the section 199A(g) deduction) that are properly allocable to such receipts.

(iii) *Special rule for patronage oil-related DPGR.* Oil-related DPGR does not include gross receipts derived from the transportation or distribution of oil, gas, or any primary product thereof. However, to the extent that the nonexempt Specified Cooperative treats gross receipts derived from transportation or distribution of oil, gas, or any primary product thereof as part of DPGR under § 1.199A–9(j)(3)(i), or under § 1.199A–9(j)(3)(i)(B), then the Specified Cooperative must treat those patronage gross receipts as oil-related DGPR.

(iv) *Oil* includes oil recovered from both conventional and non-conventional recovery methods, including crude oil, shale oil, and oil recovered from tar/oil sands. The *primary product from oil* includes all products derived from the destructive distillation of oil, including volatile products, light oils such as motor fuel and kerosene, distillates such as naphtha, lubricating oils, greases and waxes, and residues such as fuel oil. The *primary product from gas* means all gas and associated hydrocarbon components from gas wells or oil wells, whether recovered at the lease or upon further processing, including natural gas, condensates, liquefied petroleum gases such as ethane, propane, and butane, and liquid products such as natural gasoline. The primary products from oil and gas provided in this paragraph (b)(7)(iv) are not intended to represent either the only primary products from oil or gas, or the only processes from which primary products may be derived under existing and future technologies. Examples of non-primary products include, but are not limited to, petrochemicals, medicinal products, insecticides, and alcohols.

(c) *Exempt Specified Cooperatives*—(1) *In general.* This paragraph (c) applies only to exempt Specified Cooperatives.

(2) *Two section 199A(g) deductions.* The Specified Cooperative must calculate two separate section 199A(g) deductions, one patronage sourced and the other nonpatronage sourced. Patronage and nonpatronage gross receipts, related COGS that are allocable to DPGR, and other expenses, losses, or deductions (other than the section

199A(g) deduction) that are properly allocable to DPGR (deductions), DPGR, QPAI, NOLs, W–2 wages, etc. are not netted to calculate these two separate section 199A(g) deductions.

(3) *Exempt Specified Cooperative patronage section 199A(g) deduction.* The Specified Cooperative calculates its patronage section 199A(g) deduction following steps 1 through 4 in paragraphs (b)(2) through (5) of this section as if it were a nonexempt Specified Cooperative.

(4) *Exempt Specified Cooperative nonpatronage section 199A(g) deduction*—(i) *In general.* The Specified Cooperative calculates its nonpatronage section 199A(g) deduction following steps 2 through 4 in paragraphs (b)(2) through (5) of this section using only nonpatronage gross receipts and related nonpatronage deductions. For purposes of determining the amount of the nonpatronage section 199A(g) deduction allowed under paragraph (b)(5)(ii) of this section, taxable income is limited to taxable income and related deductions from nonpatronage sources. Nonpatronage NOLs reduce taxable income. Taxable income is computed without taking into account the section 199A(g) deduction or any deduction allowable under section 1382(c). Taxable income is determined using the same method of accounting used to determine distributions under section 1382(c)(2).

(ii) *Use of nonpatronage section 199A(g) deduction.* Except as provided in § 1.199A–12(c)(2) related to the rules for EAGs, the nonpatronage section 199A(g) deduction cannot create or increase a nonpatronage NOL or the amount of nonpatronage NOL carryover or carryback, if applicable, in accordance with section 172. A Specified Cooperative cannot allocate its nonpatronage section 199A(g) deduction under paragraph (d) of this section and can apply the nonpatronage section 199A(g) deduction only against its nonpatronage income and deductions. As is the case for the patronage section 199A(g) deduction, the nonpatronage section 199A(g) deduction that a Specified Cooperative does not use in the appropriate taxable year is lost.

(d) *Discretion to pass through deduction*—(1) *In general.* A Specified Cooperative may, at its discretion, pass through all, some, or none of its patronage section 199A(g) deduction to an eligible taxpayer. An eligible taxpayer is a patron other than a C corporation or a Specified Cooperative. A Specified Cooperative member of a federated cooperative may pass through the patronage section 199A(g) deduction it receives from the federated cooperative to its member patrons that are eligible taxpayers.

(2) *Amount of deduction being passed through*—(i) *In general.* A Specified Cooperative is permitted to pass through to an eligible taxpayer an amount equal to the portion of the Specified Cooperative's section 199A(g) deduction that is allowed with respect to the portion of the cooperative's QPAI that is attributable to the qualified payments the Specified Cooperative distributed to the eligible taxpayer during the taxable year and identified on the notice required in § 1.199A–7(f)(3) on an attachment to or on the Form 1099–PATR, Taxable Distributions Received From Cooperatives (Form 1099–PATR), (or any successor form) issued by the Specified Cooperative to the eligible taxpayer, unless otherwise provided by the instructions to the Form. The notice requirement to pass through the section 199A(g) deduction is in paragraph (d)(3) of this section.

(ii) *Qualified payment* means any amount of a patronage dividend or per-unit retain allocation, as described in section 1385(a)(1) or (3) received by a patron from a Specified Cooperative that is attributable to the portion of the Specified Cooperative's QPAI, for which the cooperative is allowed a section 199A(g) deduction. For this purpose, patronage dividends include any advances on patronage and per-unit retain allocations include per-unit retains paid in money during the taxable year. A Specified Cooperative calculates its qualified payment using the same method of accounting it uses to calculate its taxable income.

(3) *Notice requirement to pass through deduction.* A Specified Cooperative must identify in a written notice the amount of the section 199A(g) deduction being passed through to the eligible taxpayer. This written notice must be mailed by the Specified Cooperative to the eligible taxpayer no later than the 15th day of the ninth month following the close of the taxable year of the Specified Cooperative. The Specified Cooperative may use the same written notice, if any, that it uses to notify the eligible taxpayer of the eligible taxpayer's respective allocations of patronage distributions, or may use a separate timely written notice(s) to comply with this section. The Specified Cooperative must report the amount of section 199A(g) deduction passed through to the eligible taxpayer on an attachment to or on the Form 1099–PATR (or any successor form) issued by the Specified Cooperative to the eligible taxpayer, unless otherwise provided by the instructions to the Form.

(4) *Section 199A(g) deduction allocated to eligible taxpayer.* An eligible taxpayer may deduct the lesser of the section 199A(g) deduction identified on the notice described in paragraph (d)(3) of this section or the eligible taxpayer's taxable income in the taxable year in which the eligible taxpayer receives the timely written notice described in paragraph (d)(3) of this section. For this purpose, the eligible taxpayer's taxable income is determined without taking into account the section 199A(g) deduction being passed through to the eligible taxpayer and after taking into account any section 199A(a) deduction allowed to the eligible taxpayer. Any section 199A(g) deduction the eligible taxpayer does not use in the taxable year in which the eligible taxpayer receives the notice (received on or before the due date of the Form 1099–PATR) is lost and cannot be carried forward or back to other taxable years. The taxable income limitation for the section 199A(a) deduction set forth in section 199A(b)(3) and § 1.199A–1(a) and (b) does not apply to limit the deductibility of the section 199A(g) deduction passed through to the eligible taxpayer.

(5) *Special rules for eligible taxpayers that are Specified Cooperatives.* A Specified Cooperative that receives a section 199A(g) deduction as an eligible taxpayer can take the deduction only against patronage gross income and related deductions.

(6) *W–2 wage limitation.* The W–2 wage limitation described in paragraph (b)(5)(ii)(B) of this section is applied at the cooperative level whether or not the Specified Cooperative chooses to pass through some or all of the section 199A(g) deduction. Any section 199A(g) deduction that has been passed through by a Specified Cooperative to an eligible taxpayer is not subject to the W–2 wage limitation a second time at the eligible taxpayer's level.

(7) *Specified Cooperative denied section 1382 deduction for portion of qualified payments.* A Specified Cooperative must reduce its section 1382 deduction under section 1382(b) and/or (c), as applicable) by an amount equal to the portion of any qualified payment that is attributable to the Specified Cooperative's section 199A(g) deduction passed through to the eligible taxpayer. This means the Specified Cooperative must reduce its section 1382 deduction in an amount equal to the section 199A(g) deduction passed through to its eligible taxpayers.

(8) *No double counting.* A qualified payment received by a Specified Cooperative that is a patron of a Specified Cooperative is not taken into

account by the patron for purposes of section 199A(g).

(e) *Examples.* The following examples illustrate the application of paragraphs (b), (c), and (d) of this section. Assume for each example that the Specified Cooperative sent all required notices to patrons on or before the due date of the Form 1099–PATR.

(1) *Example 1. Nonexempt Specified Cooperative calculating section 199A(g) deduction.* (i) C is a grain marketing nonexempt Specified Cooperative, with $5,250,000 in gross receipts during 2018 from the sale of grain grown by its patrons. C paid $4,000,000 to its patrons at the time the grain was delivered in the form of per-unit retain allocations pursuant to an agreement and another $1,000,000 in patronage dividends after the close of the 2018 taxable year. C has other expenses of $250,000 during 2018, including $100,000 of W–2 wages.

(ii) C has DPGR of $5,250,000 and QPAI as defined in § 1.199A–8(b)(4)(ii) of $5,000,000 for 2018. C's section 199A(g) deduction is equal to the least of 9% of QPAI ($450,000), 9% of taxable income ($450,000), or 50% of W–2 wages ($50,000). C passes through the entire section 199A(g) deduction to its patrons. Accordingly, C reduces its $5,000,000 deduction allowable under section 1382(b) (relating to the $1,000,000 patronage dividends and $4,000,000 per-unit retain allocations) by $50,000.

(2) *Example 2. Nonexempt Specified Cooperative calculating section 199A(g) deduction with purchases.* Same facts as *Example 1,* except C purchased grain from its patrons for $4,000,000 and these purchases are not per-unit retain allocations described in section 1388(f). C allocated and reported the $1,000,000 patronage dividends to its patrons and provided notification (in accordance with the requirements of § 1.199A–7(f)(3)) that only the patronage dividends are treated as qualified payments for purposes of its section 199A(g) deduction. C has QPAI and taxable income of $1,000,000 ($5,250,000—$4,000,000—$250,000). C's section 199A(g) deduction is the lesser of 9% of QPAI ($90,000), 9% of taxable income without taking into account any deduction under section 1382(b) ($90,000), or 50% of W–2 wages ($50,000). C passes through the entire section 199A(g) deduction to its patrons. Accordingly, C reduces its $1,000,000 deduction allowable under section 1382(b) by $50,000. Patrons do not include any of the $4,000,000 of payments when determining the reduction amount under section 199A(b)(7).

(3) *Example 3. Nonexempt Specified Cooperative determines amounts included in QPAI and taxable income.* (i) C, a nonexempt Specified Cooperative, offers harvesting services and markets the grain of patrons and nonpatrons. C had gross receipts from harvesting services and grain sales, and expenses related to both. All of C's harvesting services were performed for their patrons, and 75% of the grain sales were for patrons.

(ii) C identifies 75% of the gross receipts and related expenses from grain sales and 100% of the gross receipts and related expenses from the harvesting services as patronage sourced. C identifies 25% of the gross receipts and related expenses from grain sales as nonpatronage sourced.

(iii) C does not include any nonpatronage gross receipts or related expenses from grain sales in either QPAI or taxable income when calculating the section 199A(g) deduction. C's QPAI includes the patronage DPGR, less related expenses (allocable COGS, wages and other expenses). C's taxable income includes the patronage gross receipts, whether such gross receipts are DPGR or non-DPGR.

(iv) C allocates and reports patronage dividends to its harvesting patrons and grain marketing patrons. C also notifies its grain marketing patrons (in accordance with the requirements of § 1.199A–7(f)(3)) that their patronage dividends are qualified payments used in C's section 199A(g) computation. The patrons must use this information for purposes of computing their section 199A(b)(7) reduction to their section 199A(a) deduction (*see* § 1.199A–7(f)).

(4) *Example 4. Nonexempt Specified Cooperative with patronage and nonpatronage gross receipts and related deductions.* (i) C, a nonexempt Specified Cooperative, markets corn grown by its patrons in the United States. For the calendar year ending December 31, 2020, C derives gross receipts from the marketing activity of $1,800. Such gross receipts qualify as DPGR. Assume C has $800 of expenses (including COGS, other expenses, and $400 of W–2 wages) properly allocable to DPGR, and a $1,000 deduction allowed under section 1382(b). C also derives gross receipts from nonpatronage sources in the amount of $500, and has nonpatronage deductions in the amount of $400 (including COGS, other expenses, and $100 of W–2 wages).

(ii) C does not include any gross receipts or deductions from nonpatronage sources when calculating the deduction under paragraph (b)(5)(ii) of this section. C's QPAI and taxable income both equal $1,000 ($1,800—800). C's deduction under paragraph (b)(5)(ii) of this section for the taxable year is equal to $90 (9% of $1,000), which does not exceed $200 (50% of C's W–2 wages properly allocable to DPGR). C passes through $90 of the deduction to patrons and C reduces its section 1382(b) deduction by $90.

(5) *Example 5. Exempt Specified Cooperative with patronage and nonpatronage income and deductions.* (i) C, an exempt Specified Cooperative, markets corn MPGE by its patrons in the United States. For the calendar year ending December 31, 2020, C derives gross receipts from the marketing activity of $1,800. For this activity assume C has $800 of expenses (including COGS, other expenses, and $400 of W–2 wages) properly allocable to DPGR, and a $1,000 deduction under section 1382(b). C also derives gross receipts from nonpatronage sources in the amount of $500. Assume the gross receipts qualify as DPGR. For this activity assume C has $400 of expenses (including COGS, other expenses, and $20 of W–2 wages) properly allocable to DPGR and no deduction under section 1382(c).

(ii) C calculates two separate section 199A(g) deduction amounts. C's section 199A(g) deduction attributable to patronage sources is the same as the deduction calculated by the nonexempt Specified Cooperative in *Example 1* in paragraph (e)(1) of this section.

(iii) C's nonpatronage QPAI and taxable income is equal to $100 ($500 − $400). C's deduction under paragraph (c)(3) of this section that directs C to use paragraph (b)(5)(ii) of this section attributable to nonpatronage sources is equal to $9 (9% of $100), which does not exceed $10 (50% of C's W–2 wages properly allocable to DPGR). C cannot pass through any of the nonpatronage section 199A(g) deduction amount to its patrons.

(6) *Example 6. NOL.* C, a nonexempt Specified Cooperative, MPGE agricultural or horticultural products. C is not part of an EAG as defined in § 1.199A–12. In 2018, C generates QPAI and taxable income is $600, without taking into account any of its deductions under section 1382(b), the deduction under section 199A(g), or an NOL deduction. During 2018, C incurs W–2 wages as defined in § 1.199A–11 of $300. C has an NOL carryover to 2018 of $500. C's deduction under this section for 2018 is $9 (9% × (lesser of QPAI of $600 and taxable income of $100 ($600 taxable income − $500 NOL)). Under these facts the wage limitation does not act to limit the deduction because the wage limitation is $150 (50% × $300).

(7) *Example 7. NOL.* (i) C, a nonexempt Specified Cooperative, MPGE agricultural or horticultural products. C is not part of an EAG. In 2018, C generates QPAI and taxable income of $100, without taking into account any of its deductions under section 1382(b), the deduction under section 199A(g), or an NOL deduction. C has an NOL carryover to 2018 of $500 that reduces its taxable income for 2018 to $0. C's section 199A(g) deduction for 2018 is $0 (9% × (lesser of QPAI of $100 and taxable income of $0)).

(ii) *Carryover to 2019.* C's taxable income for purposes of determining its NOL carryover to 2019 is $100. Accordingly, for purposes of section 199A(g), C's NOL carryover to 2019 is $400 ($500 NOL carryover to 2018—$100 NOL used in 2018).

(f) *Special rule for Specified Cooperative partners.* In the case described in section 199A(g)(5)(B), where a Specified Cooperative is a partner in a partnership, the partnership must separately identify and report on the Schedule K–1 of the Form 1065, U.S. Return of Partnership Income (or any successor form) issued to the Specified Cooperative the cooperative's share of gross receipts and related deductions, unless otherwise provided by the instructions to the Form. The Specified Cooperative determines what gross receipts reported by the partnership qualify as DPGR and includes these gross receipts and related deductions to calculate one section 199A(g) deduction (in the case of a nonexempt Specified Cooperative) or two section 199A(g) deductions (in the case of an exempt Specified

Cooperative) using the steps set forth in paragraphs (b) and (c) of this section.

(g) *Recapture of section 199A(g) deduction.* If the amount of the section 199A(g) deduction that was passed through to eligible taxpayers exceeds the amount allowable as a section 199A(g) deduction as determined on examination or reported on an amended return, then recapture of the excess will occur at the Specified Cooperative level in the taxable year the Specified Cooperative took the excess section 199A(g) deduction.

(h) *Applicability date.* Except as provided in paragraph (h)(2) of § 1.199A–7, the provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. Taxpayers, however, may rely on these regulations until that date, but only if the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.199A–9 Domestic production gross receipts.

(a) *Domestic production gross receipts*—(1) *In general.* The provisions of this section apply solely for purposes of section 199A(g) of the Internal Revenue Code (Code). The provisions of this section provide guidance to determine what gross receipts (defined in § 1.199A–8(b)(2)(iii)) are domestic production gross receipts (DPGR) (defined in § 1.199A–8(b)(3)(ii)). DPGR does not include gross receipts derived from services or the lease, rental, license, sale, exchange, or other disposition of land unless a de minimis or other exception applies. Partners, including partners in an EAG partnership described in § 1.199A–12(i)(1), may not treat guaranteed payments under section 707(c) as DPGR.

(2) *Application to marketing cooperatives.* For purposes of determining DPGR, a Specified Cooperative (defined in § 1.199A–8(a)(2)) will be treated as having manufactured, produced, grown, or extracted (MPGE) (defined in paragraph (f) of this section) in whole or significant part (defined in paragraph (h) of this section) any agricultural or horticultural product (defined in § 1.199A–8(a)(4)) within the United States (defined in paragraph (i) of this section) marketed by the Specified Cooperative which its patrons (defined in § 1.1388–1(e)) have so MPGE.

(b) *Related persons*—(1) *In general.* Pursuant to 199A(g)(3)(D)(ii), DPGR does not include any gross receipts derived from agricultural or horticultural products leased, licensed, or rented by the Specified Cooperative for use by any related person. A person is treated as related to another person if both persons are treated as a single employer under either section 52(a) or (b) (without regard to section 1563(b)), or section 414(m) or (o). Any other person is an unrelated person for purposes of the section 199A(g) deduction.

(2) *Exceptions.* Notwithstanding paragraph (b)(1) of this section, gross receipts derived from any agricultural or horticultural product leased or rented by the Specified Cooperative to a related person may qualify as DPGR if the agricultural or horticultural product is held for sublease or rent, or is subleased or rented, by the related person to an unrelated person for the ultimate use of the unrelated person. Similarly, notwithstanding paragraph (b)(1) of this section, gross receipts derived from a license of the right to reproduce an agricultural or horticultural product to a related person for reproduction and sale, exchange, lease, or rental to an unrelated person for the ultimate use of the unrelated person are treated as gross receipts from a disposition of an agricultural or horticultural product and may qualify as DPGR.

(c) *Allocating gross receipts*—(1) *In general.* A Specified Cooperative must determine the portion of its gross receipts for the taxable year that is DPGR and the portion of its gross receipts that is non-DPGR using a reasonable method based on all the facts and circumstances. Applicable Federal income tax principles apply to determine whether a transaction is, in substance, a lease, rental, license, sale, exchange, or other disposition the gross receipts of which may constitute DPGR, whether it is a service the gross receipts of which may constitute non-DPGR, or some combination thereof. For example, if a Specified Cooperative sells an agricultural or horticultural product and, in connection with that sale, also provides services, the Specified Cooperative must allocate its gross receipts from the transaction using a reasonable method based on all the facts and circumstances that accurately identifies the gross receipts that constitute DPGR and non-DPGR in accordance with the requirements of §§ 1.199A–8(b) and/or (c). The chosen reasonable method must be consistently applied from one taxable year to another and must clearly reflect the portion of gross receipts for the taxable year that is DPGR and the portion of gross receipts that is non-DPGR. The books and records maintained for gross receipts must be consistent with any allocations under this paragraph (c)(1).

(2) *Reasonable method of allocation.* If a Specified Cooperative has the information readily available and can, without undue burden or expense, specifically identify whether the gross receipts are derived from an item (and thus, are DPGR), then the Specified Cooperative must use that specific identification to determine DPGR. If the Specified Cooperative does not have information readily available to specifically identify whether gross receipts are derived from an item or cannot, without undue burden or expense, specifically identify whether gross receipts are derived from an item, then the Specified Cooperative is not required to use a method that specifically identifies whether the gross receipts are derived from an item but can use a reasonable allocation method. Factors taken into consideration in determining whether the Specified Cooperative's method of allocating gross receipts between DPGR and non-DPGR is reasonable include whether the Specified Cooperative uses the most accurate information available; the relationship between the gross receipts and the method used; the accuracy of the method chosen as compared with other possible methods; whether the method is used by the Specified Cooperative for internal management or other business purposes; whether the method is used for other Federal or state income tax purposes; the time, burden, and cost of using alternative methods; and whether the Specified Cooperative applies the method consistently from year to year.

(3) *De minimis rules*—(i) *DPGR.* A Specified Cooperative's applicable gross receipts as provided in §§ 1.199A–8(b) and/or (c) may be treated as DPGR if less than 5 percent of the Specified Cooperative's total gross receipts are non-DPGR (after application of the exceptions provided in § 1.199A–9(j)(3)). If the amount of the Specified Cooperative's gross receipts that are non-DPGR equals or exceeds 5 percent of the Specified Cooperative's total gross receipts, then, except as provided in paragraph (c)(3)(ii) of this section, the Specified Cooperative is required to allocate all gross receipts between DPGR and non-DPGR in accordance with paragraph (c)(1) of this section. If a Specified Cooperative is a member of an expanded affiliated group (EAG) (defined in § 1.199A–12), but is not a member of a consolidated group, then the determination of whether less than 5 percent of the Specified Cooperative's total gross receipts are non-DPGR is made at the Specified Cooperative level. If a Specified Cooperative is a member

of a consolidated group, then the determination of whether less than 5 percent of the Specified Cooperative's total gross receipts are non-DPGR is made at the consolidated group level. *See* § 1.199A–12(d).

(ii) *Non-DPGR.* A Specified Cooperative's applicable gross receipts as provided in §§ 1.199A–8(b) and/or (c) may be treated as non-DPGR if less than 5 percent of the Specified Cooperative's total gross receipts are DPGR. If a Specified Cooperative is a member of an EAG, but is not a member of a consolidated group, then the determination of whether less than 5 percent of the Specified Cooperative's total gross receipts are DPGR is made at the Specified Cooperative level. If a Specified Cooperative is a member of a consolidated group, then the determination of whether less than 5 percent of the Specified Cooperative's total gross receipts are DPGR is made at the consolidated group level.

(d) *Use of historical data for multiple-year transactions.* If a Specified Cooperative recognizes and reports gross receipts from upfront payments or other similar payments on a Federal income tax return for a taxable year, then the Specified Cooperative's use of historical data in making an allocation of gross receipts from the transaction between DPGR and non-DPGR may constitute a reasonable method. If a Specified Cooperative makes allocations using historical data, and subsequently updates the data, then the Specified Cooperative must use the more recent or updated data, starting in the taxable year in which the update is made.

(e) *Determining DPGR item-by-item*—(1) *In general.* For purposes of the section 199A(g) deduction, a Specified Cooperative determines, using a reasonable method based on all the facts and circumstances, whether gross receipts qualify as DPGR on an item-by-item basis (and not, for example, on a division-by-division, product line-by-product line, or transaction-by-transaction basis). The chosen reasonable method must be consistently applied from one taxable year to another and must clearly reflect the portion of gross receipts that is DPGR. The books and records maintained for gross receipts must be consistent with any allocations under this paragraph (e)(1).

(i) The term *item* means the agricultural or horticultural product offered by the Specified Cooperative in the normal course of its trade or business for lease, rental, license, sale, exchange, or other disposition (for purposes of this paragraph (e), collectively referred to as disposition) to customers, if the gross receipts from the disposition of such product qualify as DPGR; or

(ii) If paragraph (e)(1)(i) of this section does not apply to the product, then any component of the product described in paragraph (e)(1)(i) of this section is treated as the item, provided that the gross receipts from the disposition of the product described in paragraph (e)(1)(i) of this section that are attributable to such component qualify as DPGR. Each component that meets the requirements under this paragraph (e)(1)(ii) must be treated as a separate item and a component that meets the requirements under this paragraph (e)(1)(ii) may not be combined with a component that does not meet these requirements.

(2) *Special rules.* (i) For purposes of paragraph (e)(1)(i) of this section, in no event may a single item consist of two or more products unless those products are offered for disposition, in the normal course of the Specified Cooperative's trade or business, as a single item (regardless of how the products are packaged).

(ii) In the case of agricultural or horticultural products customarily sold by weight or by volume, the item is determined using the most common custom of the industry (for example, barrels of oil).

(3) *Exception.* If the Specified Cooperative MPGE agricultural or horticultural products within the United States that it disposes of, and the Specified Cooperative leases, rents, licenses, purchases, or otherwise acquires property that contains or may contain the agricultural or horticultural products (or a portion thereof), and the Specified Cooperative cannot reasonably determine, without undue burden and expense, whether the acquired property contains any of the original agricultural or horticultural products MPGE by the Specified Cooperative, then the Specified Cooperative is not required to determine whether any portion of the acquired property qualifies as an item for purposes of paragraph (e)(1) of this section. Therefore, the gross receipts derived from the disposition of the acquired property may be treated as non-DPGR. Similarly, the preceding sentences apply if the Specified Cooperative can reasonably determine that the acquired property contains agricultural or horticultural products (or a portion thereof) MPGE by the Specified Cooperative, but cannot reasonably determine, without undue burden or expense, how much, or what type, grade, etc., of the agricultural or horticultural MPGE by the Specified Cooperative the acquired property contains.

(f) *Definition of manufactured, produced, grown, or extracted (MPGE)*—(1) *In general.* Except as provided in paragraphs (f)(2) and (3) of this section, the term *MPGE* includes manufacturing, producing, growing, extracting, installing, developing, improving, and creating agricultural or horticultural products; making agricultural or horticultural products out of material by processing, manipulating, refining, or changing the form of an article, or by combining or assembling two or more articles; cultivating soil, raising livestock, and farming aquatic products. The term MPGE also includes storage, handling, or other processing activities (other than transportation activities) within the United States related to the sale, exchange, or other disposition of agricultural or horticultural products only if the products are consumed in connection with or incorporated into the MPGE of agricultural or horticultural products, whether or not by the Specified Cooperative. The Specified Cooperative (or the patron if section 1.199A–9(a)(2) applies) must have the benefits and burdens of ownership of the agricultural or horticultural products under Federal income tax principles during the period the MPGE activity occurs in order for the gross receipts derived from the MPGE of the agricultural or horticultural products to qualify as DPGR.

(2) *Packaging, repackaging, or labeling.* If the Specified Cooperative packages, repackages, or labels agricultural or horticultural products and engages in no other MPGE activity with respect to those agricultural or horticultural products, the packaging, repackaging, or labeling does not qualify as MPGE with respect to those agricultural or horticultural products.

(3) *Installing.* If a Specified Cooperative installs agricultural or horticultural products and engages in no other MPGE activity with respect to the agricultural or horticultural products, the Specified Cooperative's installing activity does not qualify as an MPGE activity. Notwithstanding paragraph (j)(3)(i)(A) of this section, if the Specified Cooperative installs agricultural or horticultural products MPGE by the Specified Cooperative and the Specified Cooperative has the benefits and burdens of ownership of the agricultural or horticultural products under Federal income tax principles during the period the installing activity occurs, then the portion of the installing activity that relates to the agricultural or

horticultural products is an MPGE activity.

(4) *Consistency with section 263A.* A Specified Cooperative that has MPGE agricultural or horticultural products for the taxable year must treat itself as a producer under section 263A with respect to the agricultural or horticultural products unless the Specified Cooperative is not subject to section 263A. A Specified Cooperative that currently is not properly accounting for its production activities under section 263A, and wishes to change its method of accounting to comply with the producer requirements of section 263A, must follow the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (for further guidance, for example, *see* Rev. Proc. 2015–13, 2015–5 IRB 419, or any applicable subsequent guidance (*see* § 601.601(d)(2) of this chapter)).

(g) *By the taxpayer.* With respect to the exception of the rules applicable to an EAG and EAG partnerships under § 1.199A–12, only one Specified Cooperative may claim the section 199A(g) deduction with respect to any qualifying activity under paragraph (f) of this section performed in connection with the same agricultural or horticultural product. If an unrelated party performs a qualifying activity under paragraph (f) of this section pursuant to a contract with a Specified Cooperative (or its patron as relevant under paragraph (a)(2) of this section), then only if the Specified Cooperative (or its patron) has the benefits and burdens of ownership of the agricultural or horticultural product under Federal income tax principles during the period in which the qualifying activity occurs is the Specified Cooperative (or its patron) treated as engaging in the qualifying activity.

(h) *In whole or significant part defined*—(1) *In general.* Agricultural or horticultural products must be MPGE in whole or significant part by the Specified Cooperative (or its patrons in the case described in paragraph (a)(2) of this section) and in whole or significant part within the United States to qualify under section 199A(g)(3)(D)(i). If a Specified Cooperative enters into a contract with an unrelated person for the unrelated person to MPGE agricultural or horticultural products for the Specified Cooperative and the Specified Cooperative has the benefits and burdens of ownership of the agricultural or horticultural products under applicable Federal income tax principles during the period the MPGE activity occurs, then, pursuant to paragraph (g) of this section, the Specified Cooperative is considered to MPGE the agricultural or horticultural products under this section. The unrelated person must perform the MPGE activity on behalf of the Specified Cooperative in whole or significant part within the United States in order for the Specified Cooperative to satisfy the requirements of this paragraph (h)(1).

(2) *Substantial in nature.* Agricultural or horticultural products will be treated as MPGE in whole or in significant part by the Specified Cooperative (or its patrons in the case described in paragraph (a)(2) of this section) within the United States for purposes of paragraph (h)(1) of this section if the MPGE of the agricultural or horticultural products by the Specified Cooperative within the United States is substantial in nature taking into account all the facts and circumstances, including the relative value added by, and relative cost of, the Specified Cooperative's MPGE within the United States, the nature of the agricultural or horticultural products, and the nature of the MPGE activity that the Specified Cooperative performs within the United States. The MPGE of a key component of an agricultural or horticultural product does not, in itself, meet the substantial-in-nature requirement with respect to an agricultural or horticultural product under this paragraph (h)(2). In the case of an agricultural or horticultural product, research and experimental activities under section 174 and the creation of intangible assets are not taken into account in determining whether the MPGE of the agricultural or horticultural product is substantial in nature.

(3) *Safe harbor*—(i) *In general.* A Specified Cooperative (or its patrons in the case described in paragraph (a)(2) of this section) will be treated as having MPGE an agricultural or horticultural product in whole or in significant part within the United States for purposes of paragraph (h)(1) of this section if the direct labor and overhead of such Specified Cooperative to MPGE the agricultural or horticultural product within the United States account for 20 percent or more of the Specified Cooperative's COGS of the agricultural or horticultural product, or in a transaction without COGS (for example, a lease, rental, or license), account for 20 percent or more of the Specified Cooperative's unadjusted depreciable basis (as defined in paragraph (h)(3)(ii) of this section) in property included in the definition of agricultural or horticultural products. For Specified Cooperatives subject to section 263A, overhead is all costs required to be capitalized under section 263A except direct materials and direct labor. For Specified Cooperatives not subject to section 263A, overhead may be computed using a reasonable method based on all the facts and circumstances, but may not include any cost, or amount of any cost, that would not be required to be capitalized under section 263A if the Specified Cooperative were subject to section 263A. Research and experimental expenditures under section 174 and the costs of creating intangible assets are not taken into account in determining direct labor or overhead for any agricultural or horticultural product. In the case of agricultural or horticultural products, research and experimental expenditures under section 174 and any other costs incurred in the creation of intangible assets may be excluded from COGS or unadjusted depreciable basis for purposes of determining whether the Specified Cooperative meets the safe harbor under this paragraph (h)(3). For Specified Cooperatives not subject to section 263A, the chosen reasonable method to compute overhead must be consistently applied from one taxable year to another and must clearly reflect the Specified Cooperative's portion of overhead not subject to section 263A. The method must also be reasonable based on all the facts and circumstances. The books and records maintained for overhead must be consistent with any allocations under this paragraph (h)(3)(i).

(ii) *Unadjusted depreciable basis.* The term unadjusted depreciable basis means the basis of property for purposes of section 1011 without regard to any adjustments described in section 1016(a)(2) and (3). This basis does not reflect the reduction in basis for—

(A) Any portion of the basis the Specified Cooperative properly elects to treat as an expense under sections 179 or 179C; or

(B) Any adjustments to basis provided by other provisions of the Code and the regulations under the Code (for example, a reduction in basis by the amount of the disabled access credit pursuant to section 44(d)(7)).

(4) *Special rules*—(i) *Contract with an unrelated person.* If a Specified Cooperative enters into a contract with an unrelated person for the unrelated person to MPGE an agricultural or horticultural product within the United States for the Specified Cooperative, and the Specified Cooperative is considered to MPGE the agricultural or horticultural product pursuant to paragraph (f)(1) of this section, then, for purposes of the substantial-in-nature

requirement under paragraph (h)(2) of this section and the safe harbor under paragraph (h)(3)(i) of this section, the Specified Cooperative's MPGE activities or direct labor and overhead must include both the Specified Cooperative's MPGE activities or direct labor and overhead to MPGE the agricultural or horticultural product within the United States as well as the MPGE activities or direct labor and overhead of the unrelated person to MPGE the agricultural or horticultural product within the United States under the contract.

(ii) *Aggregation.* In determining whether the substantial-in-nature requirement under paragraph (h)(2) of this section or the safe harbor under paragraph (h)(3)(i) of this section is met at the time the Specified Cooperative disposes of an agricultural or horticultural product—

(A) An EAG member must take into account all of the previous MPGE activities or direct labor and overhead of the other members of the EAG;

(B) An EAG partnership as defined in § 1.199A–12(i)(1) must take into account all of the previous MPGE activities or direct labor and overhead of all members of the EAG in which the partners of the EAG partnership are members (as well as the previous MPGE activities of any other EAG partnerships owned by members of the same EAG); and

(C) A member of an EAG in which the partners of an EAG partnership are members must take into account all of the previous MPGE activities or direct labor and overhead of the EAG partnership (as well as those of any other members of the EAG and any previous MPGE activities of any other EAG partnerships owned by members of the same EAG).

(i) *United States defined.* For purposes of section 199A(g), the term *United States* includes the 50 states, the District of Columbia, the territorial waters of the United States, and the seabed and subsoil of those submarine areas that are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources. Consistent with its definition in section 7701(a)(9), the term *United States* does not include possessions and territories of the United States or the airspace or space over the United States and these areas.

(j) *Derived from the lease, rental, license, sale, exchange, or other disposition*—(1) *In general*—(i) *Definition.* The term *derived from the lease, rental, license, sale, exchange, or other disposition* is defined as, and limited to, the gross receipts directly derived from the lease, rental, license, sale, exchange, or other disposition of agricultural or horticultural products even if the Specified Cooperative has already recognized receipts from a previous lease, rental, license, sale, exchange, or other disposition of the same agricultural or horticultural products. Applicable Federal income tax principles apply to determine whether a transaction is, in substance, a lease, rental, license, sale, exchange, or other disposition, whether it is a service, or whether it is some combination thereof.

(ii) *Lease income.* The financing and interest components of a lease of agricultural or horticultural products are considered to be derived from the lease of such agricultural or horticultural products. However, any portion of the lease income that is attributable to services or non-qualified property as defined in paragraph (j)(3) of this section is not derived from the lease of agricultural or horticultural products.

(iii) *Income substitutes.* The proceeds from business interruption insurance, governmental subsidies, and governmental payments not to produce are treated as gross receipts derived from the lease, rental, license, sale, exchange, or other disposition to the extent they are substitutes for gross receipts that would qualify as DPGR.

(iv) *Exchange of property*—(A) *Taxable exchanges.* The value of property received by the Specified Cooperative in a taxable exchange of agricultural or horticultural products MPGE in whole or in significant part by the Specified Cooperative within the United States is DPGR for the Specified Cooperative (assuming all the other requirements of this section are met). However, unless the Specified Cooperative meets all of the requirements under this section with respect to any additional MPGE by the Specified Cooperative of the agricultural or horticultural products received in the taxable exchange, any gross receipts derived from the sale by the Specified Cooperative of the property received in the taxable exchange are non-DPGR, because the Specified Cooperative did not MPGE such property, even if the property was an agricultural or horticultural product in the hands of the other party to the transaction.

(B) *Safe harbor.* For purposes of paragraph (j)(1)(iv)(A) of this section, the gross receipts derived by the Specified Cooperative from the sale of eligible property (as defined in paragraph (j)(1)(iv)(C) of this section) received in a taxable exchange, net of any adjustments between the parties involved in the taxable exchange to account for differences in the eligible property exchanged (for example, location differentials and product differentials), may be treated as the value of the eligible property received by the Specified Cooperative in the taxable exchange. For purposes of the preceding sentence, the taxable exchange is deemed to occur on the date of the sale of the eligible property received in the taxable exchange by the Specified Cooperative, to the extent the sale occurs no later than the last day of the month following the month in which the exchanged eligible property is received by the Specified Cooperative. In addition, if the Specified Cooperative engages in any further MPGE activity with respect to the eligible property received in the taxable exchange, then, unless the Specified Cooperative meets the in-whole-or-in-significant-part requirement under paragraph (h)(1) of this section with respect to the property sold, for purposes of this paragraph (j)(1)(iv)(B), the Specified Cooperative must also value the property sold without taking into account the gross receipts attributable to the further MPGE activity.

(C) *Eligible property.* For purposes of paragraph (j)(1)(iv)(B) of this section, eligible property is—

(*1*) Oil, natural gas, or petrochemicals, or products derived from oil, natural gas, or petrochemicals; or

(*2*) Any other property or product designated by publication in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(b) of this chapter).

(*3*) For this purpose, the term *natural gas* includes only natural gas extracted from a natural deposit and does not include, for example, methane gas extracted from a landfill. In the case of natural gas, production activities include all activities involved in extracting natural gas from the ground and processing the gas into pipeline quality gas.

(2) *Hedging transactions*—(i) *In general.* For purposes of this section, if a transaction is a hedging transaction within the meaning of section 1221(b)(2)(A) and § 1.1221–2(b), is properly identified as a hedging transaction in accordance with § 1.1221–2(f), and the risk being hedged relates to property described in section 1221(a)(1) that gives rise to DPGR or to property described in section 1221(a)(8) that is consumed in an activity that gives rise to DPGR, then—

(A) In the case of a hedge of purchases of property described in section

1221(a)(1), income, deduction, gain, or loss on the hedging transaction must be taken into account in determining COGS;

(B) In the case of a hedge of sales of property described in section 1221(a)(1), income, deduction, gain, or loss on the hedging transaction must be taken into account in determining DPGR; and

(C) In the case of a hedge of purchases of property described in section 1221(a)(8), income, deduction, gain, or loss on the hedging transaction must be taken into account in determining DPGR.

(ii) *Allocation.* The income, deduction, gain and loss from hedging transactions described in paragraph (j)(2) of this section must be allocated between the patronage and nonpatronage (defined in § 1.1388–1(f)) sourced income and related deductions of the Specified Cooperatives consistent with the cooperative's method for determining patronage and nonpatronage income and deductions.

(iii) *Effect of identification and nonidentification.* The principles of § 1.1221–2(g) apply to a Specified Cooperative that identifies or fails to identify a transaction as a hedging transaction, except that the consequence of identifying as a hedging transaction a transaction that is not in fact a hedging transaction described in paragraph (j)(2) of this section, or of failing to identify a transaction that the Specified Cooperative has no reasonable grounds for treating as other than a hedging transaction described in paragraph (j)(2) of this section, is that deduction or loss (but not income or gain) from the transaction is taken into account under paragraph (j)(2) of this section.

(iv) *Other rules.* See § 1.1221–2(e) for rules applicable to hedging by members of a consolidated group and § 1.446–4 for rules regarding the timing of income, deductions, gains or losses with respect to hedging transactions.

(3) *Allocation of gross receipts to embedded services and non-qualified property*—(i) *Embedded services and non-qualified property*—(A) *In general.* Except as otherwise provided in paragraph (j)(3)(i)(B) of this section, gross receipts derived from the performance of services do not qualify as DPGR. In the case of an embedded service, that is, a service the price of which, in the normal course of the business, is not separately stated from the amount charged for the lease, rental, license, sale, exchange, or other disposition of agricultural or horticultural products, DPGR includes only the gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of agricultural or horticultural products (assuming all the other requirements of this section are met) and not any receipts attributable to the embedded service. In addition, DPGR does not include gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of property that does not meet all of the requirements under this section (non-qualified property). The allocation of the gross receipts attributable to the embedded services or non-qualified property will be deemed to be reasonable if the allocation reflects the fair market value of the embedded services or non-qualified property.

(B) *Exceptions.* There are five exceptions to the rules under paragraph (j)(3)(i)(A) of this section regarding embedded services and non-qualified property. A Specified Cooperative may include in DPGR, if all the other requirements of this section are met with respect to the underlying item of agricultural or horticultural products to which the embedded services or non-qualified property relate, the gross receipts derived from—

(1) A qualified warranty, that is, a warranty that is provided in connection with the lease, rental, license, sale, exchange, or other disposition of agricultural or horticultural products if, in the normal course of the Specified Cooperative's business—

(i) The price for the warranty is not separately stated from the amount charged for the lease, rental, license, sale, exchange, or other disposition of the agricultural or horticultural products; and

(ii) The warranty is neither separately offered by the Specified Cooperative nor separately bargained for with customers (that is, a customer cannot purchase the agricultural or horticultural products without the warranty);

(2) A qualified delivery, that is, a delivery or distribution service that is provided in connection with the lease, rental, license, sale, exchange, or other disposition of agricultural or horticultural products if, in the normal course of the Specified Cooperative's business—

(i) The price for the delivery or distribution service is not separately stated from the amount charged for the lease, rental, license, sale, exchange, or other disposition of the agricultural or horticultural products; and

(ii) The delivery or distribution service is neither separately offered by the Specified Cooperative nor separately bargained for with customers (that is, a customer cannot purchase the agricultural or horticultural products without the delivery or distribution service).

(3) A qualified operating manual, that is, a manual of instructions that is provided in connection with the lease, rental, license, sale, exchange, or other disposition of the agricultural or horticultural products if, in the normal course of the Specified Cooperative's business—

(i) The price for the manual is not separately stated from the amount charged for the lease, rental, license, sale, exchange, or other disposition of the agricultural or horticultural products;

(ii) The manual is neither separately offered by the Specified Cooperative nor separately bargained for with customers (that is, a customer cannot purchase the agricultural or horticultural products without the manual); and

(iii) The manual is not provided in connection with a training course for customers.

(4) A qualified installation, that is, an installation service for agricultural or horticultural products that is provided in connection with the lease, rental, license, sale, exchange, or other disposition of the agricultural or horticultural products if, in the normal course of the Specified Cooperative's business—

(i) The price for the installation service is not separately stated from the amount charged for the lease, rental, license, sale, exchange, or other disposition of the agricultural or horticultural products; and

(ii) The installation is neither separately offered by the Specified Cooperative nor separately bargained for with customers (that is, a customer cannot purchase the agricultural or horticultural products without the installation service).

(5) A de minimis amount of gross receipts from embedded services and non-qualified property for each item of agricultural or horticultural products may qualify. For purposes of this exception, a de minimis amount of gross receipts from embedded services and non-qualified property is less than 5 percent of the total gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of each item of agricultural or horticultural products. In the case of gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of agricultural or horticultural products that are received over a period of time (for example, a multi-year lease or installment sale), this de minimis exception is applied by taking into account the total gross receipts for the entire period derived (and to be derived) from the lease, rental, license, sale, exchange, or other disposition of the

item of agricultural or horticultural products. For purposes of the preceding sentence, if a Specified Cooperative treats gross receipts as DPGR under this de minimis exception, then the Specified Cooperative must treat the gross receipts recognized in each taxable year consistently as DPGR. The gross receipts that the Specified Cooperative treats as DPGR under paragraphs (j)(3)(i)(B)(1) through (4) of this section are treated as DPGR for purposes of applying this de minimis exception. This de minimis exception does not apply if the price of a service or non-qualified property is separately stated by the Specified Cooperative, or if the service or non-qualified property is separately offered or separately bargained for with the customer (that is, the customer can purchase the agricultural or horticultural products without the service or non-qualified property).

(ii) *Non-DPGR.* Applicable gross receipts as provided in §§ 1.199A–8(b) and/or (c) derived from the lease, rental, license, sale, exchange or other disposition of an item of agricultural or horticultural products may be treated as non-DPGR if less than 5 percent of the Specified Cooperative's total gross receipts derived from the lease, rental, license, sale, exchange or other disposition of that item are DPGR (taking into account embedded services and non-qualified property included in such disposition, but not part of the item). In the case of gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of agricultural or horticultural products that are received over a period of time (for example, a multi-year lease or installment sale), this paragraph (j)(5)(ii) is applied by taking into account the total gross receipts for the entire period derived (and to be derived) from the lease, rental, license, sale, exchange, or other disposition of the item of agricultural or horticultural products. For purposes of the preceding sentence, if the Specified Cooperative treats gross receipts as non-DPGR under this de minimis exception, then the Specified Cooperative must treat the gross receipts recognized in each taxable year consistently as non-DPGR.

(k) *Applicability date.* The provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. Taxpayers, however, may rely on these regulations until that date, but only if the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.199A–10 Allocation of costs of goods sold (COGS) and other deductions to domestic production gross receipts (DPGR), and other rules.

(a) *In general.* The provisions of this section apply solely for purposes of section 199A(g) of the Internal Revenue Code (Code). The provisions of this section provide additional guidance on determining qualified production activities income (QPAI) as described and defined in § 1.199A–8(b)(4)(ii).

(b) *COGS allocable to DPGR*—(1) *In general.* When determining its QPAI, the Specified Cooperative (defined in § 1.199A–8(a)(2)) must subtract from its DPGR (defined in § 1.199A–8(b)(3)(ii)) the COGS allocable to its DPGR. The Specified Cooperative determines its COGS allocable to DPGR in accordance with this paragraph (b)(1) or, if applicable, paragraph (f) of this section. In the case of a sale, exchange, or other disposition of inventory, COGS is equal to beginning inventory of the Specified Cooperative plus purchases and production costs incurred during the taxable year and included in inventory costs by the Specified Cooperative, less ending inventory of the Specified Cooperative. In determining its QPAI, the Specified Cooperative does not include in COGS any payment made, whether during the taxable year, or included in beginning inventory, for which a deduction is allowed under section 1382(b) and/or (c), as applicable. *See* § 1.199A–8(b)(4)(C). COGS is determined under the methods of accounting that the Specified Cooperative uses to compute taxable income. *See* sections 263A, 471, and 472. If section 263A requires the Specified Cooperative to include additional section 263A costs (as defined in § 1.263A–1(d)(3)) in inventory, additional section 263A costs must be included in determining COGS. COGS also includes the Specified Cooperative's inventory valuation adjustments such as write-downs under the lower of cost or market method. In the case of a sale, exchange, or other disposition (including, for example, theft, casualty, or abandonment) by the Specified Cooperative of non-inventory property, COGS for purposes of this section includes the adjusted basis of the property.

(2) *Allocating COGS*—(i) *In general.* A Specified Cooperative must use a reasonable method based on all the facts and circumstances to allocate COGS between DPGR and non-DPGR. Whether an allocation method is reasonable is based on all the facts and circumstances, including whether the Specified Cooperative uses the most accurate information available; the relationship between COGS and the method used; the accuracy of the method chosen as compared with other possible methods; whether the method is used by the Specified Cooperative for internal management or other business purposes; whether the method is used for other Federal or state income tax purposes; the availability of costing information; the time, burden, and cost of using alternative methods; and whether the Specified Cooperative applies the method consistently from year to year. Depending on the facts and circumstances, reasonable methods may include methods based on gross receipts (defined in § 1.199A–8(b)(2)(iii)), number of units sold, number of units produced, or total production costs. Ordinarily, if a Specified Cooperative uses a method to allocate gross receipts between DPGR and non-DPGR, then the use of a different method to allocate COGS that is not demonstrably more accurate than the method used to allocate gross receipts will not be considered reasonable. However, if a Specified Cooperative has information readily available to specifically identify COGS allocable to DPGR and can specifically identify that amount without undue burden or expense, COGS allocable to DPGR is that amount irrespective of whether the Specified Cooperative uses another allocation method to allocate gross receipts between DPGR and non-DPGR. A Specified Cooperative that does not have information readily available to specifically identify COGS allocable to DPGR and that cannot, without undue burden or expense, specifically identify that amount is not required to use a method that specifically identifies COGS allocable to DPGR. The chosen reasonable method must be consistently applied from one taxable year to another and must clearly reflect the portion of COGS between DPGR and non-DPGR. The method must also be reasonable based on all the facts and circumstances. The books and records maintained for COGS must be consistent with any allocations under this paragraph (b)(2).

(ii) *Gross receipts recognized in an earlier taxable year.* If the Specified Cooperative (other than a Specified Cooperative that uses the small business simplified overall method of paragraph (f) of this section) recognizes and reports gross receipts on a Federal income tax return for a taxable year, and incurs COGS related to such gross receipts in a subsequent taxable year, then regardless of whether the gross receipts ultimately qualify as DPGR, the

Specified Cooperative must allocate the COGS to—

(A) DPGR if the Specified Cooperative identified the related gross receipts as DPGR in the prior taxable year; or

(B) Non-DPGR if the Specified Cooperative identified the related gross receipts as non-DPGR in the prior taxable year or if the Specified Cooperative recognized under the Specified Cooperative's methods of accounting those gross receipts in a taxable year to which section 199A(g) does not apply.

(iii) *COGS associated with activities undertaken in an earlier taxable year*—(A) *In general.* A Specified Cooperative must allocate its COGS between DPGR and non-DPGR under the rules provided in paragraphs (b)(2)(i) and (iii) of this section, regardless of whether certain costs included in its COGS can be associated with activities undertaken in an earlier taxable year (including a year prior to the effective date of section 199A(g)). A Specified Cooperative may not segregate its COGS into component costs and allocate those component costs between DPGR and non-DPGR.

(B) *Example.* The following example illustrates an application of paragraph (b)(2)(iii)(A) of this section.

(*1*) *Example.* During the 2018 taxable year, nonexempt Specified Cooperative X grew and sold Horticultural Product A. All of the patronage gross receipts from sales recognized by X in 2018 were from the sale of Horticultural Product A and qualified as DPGR. Employee 1 of X was involved in X's production process until he retired in 2013. In 2018, X paid $30 directly from its general assets for Employee 1's medical expenses pursuant to an unfunded, self-insured plan for retired X employees. For purposes of computing X's 2018 taxable income, X capitalized those medical costs to inventory under section 263A. In 2018, the COGS for a unit of Horticultural Product A was $100 (including the applicable portion of the $30 paid for Employee 1's medical costs that was allocated to COGS under X's allocation method for additional section 263A costs). X has information readily available to specifically identify COGS allocable to DPGR and can identify that amount without undue burden and expense because all of X's gross receipts from sales in 2018 are attributable to the sale of Horticultural Product A and qualify as DPGR. The inventory cost of each unit of Horticultural Product A sold in 2018, including the applicable portion of retiree medical costs, is related to X's gross receipts from the sale of Horticultural Product A in 2018. X may not segregate the 2018 COGS by separately allocating the retiree medical costs, which are components of COGS, to DPGR and non-DPGR. Thus, even though the retiree medical costs can be associated with activities undertaken in prior years, $100 of inventory cost of each unit of Horticultural Product A sold in 2018, including the applicable portion of the retiree medical expense cost component, is allocable to DPGR in 2018.

(3) *Special allocation rules.* Section 199A(g)(3)(C) provides the following two special rules—

(i) For purposes of determining the COGS that are allocable to DPGR, any item or service brought into the United States (defined in § 1.199A–9(i)) is treated as acquired by purchase, and its cost is treated as not less than its value immediately after it entered the United States. A similar rule applies in determining the adjusted basis of leased or rented property where the lease or rental gives rise to DPGR.

(ii) In the case of any property described in paragraph (b)(3)(i) of this section that has been exported by the Specified Cooperative for further manufacture, the increase in cost or adjusted basis under paragraph (b)(3)(i) of this section cannot exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture. For the purposes of this paragraph (b)(3), the value of property is its customs value as defined in section 1059A(b)(1).

(4) *Rules for inventories valued at market or bona fide selling prices.* If part of COGS is attributable to the Specified Cooperative's inventory valuation adjustments, then COGS allocable to DPGR includes inventory adjustments to agricultural or horticultural products that are MPGE in whole or significant part within the United States. Accordingly, a Specified Cooperative that values its inventory under § 1.471–4 (inventories at cost or market, whichever is lower) or § 1.471–2(c) (subnormal goods at bona fide selling prices) must allocate a proper share of such adjustments (for example, write-downs) to DPGR based on a reasonable method based on all the facts and circumstances. Factors taken into account in determining whether the method is reasonable include whether the Specified Cooperative uses the most accurate information available; the relationship between the adjustment and the allocation base chosen; the accuracy of the method chosen as compared with other possible methods; whether the method is used by the Specified Cooperative for internal management or other business purposes; whether the method is used for other Federal or state income tax purposes; the time, burden, and cost of using alternative methods; and whether the Specified Cooperative applies the method consistently from year to year. If the Specified Cooperative has information readily available to specifically identify the proper amount of inventory valuation adjustments allocable to DPGR, then the Specified Cooperative must allocate that amount to DPGR. The Specified Cooperative that does not have information readily available to specifically identify the proper amount of its inventory valuation adjustments allocable to DPGR and that cannot, without undue burden or expense, specifically identify the proper amount of its inventory valuation adjustments allocable to DPGR, is not required to use a method that specifically identifies inventory valuation adjustments to DPGR. The chosen reasonable method must be consistently applied from one taxable year to another and must clearly reflect inventory adjustments. The method must also be reasonable based on all the facts and circumstances. The books and records maintained for inventory adjustments must be consistent with any allocations under this paragraph (b)(4).

(5) *Rules applicable to inventories accounted for under the last-in, first-out inventory method*—(i) *In general.* This paragraph (b)(5) applies to inventories accounted for using the specific goods last-in, first-out (LIFO) method or the dollar-value LIFO method. Whenever a specific goods grouping or a dollar-value pool contains agricultural or horticultural products that produce DPGR and goods that do not, the Specified Cooperative must allocate COGS attributable to that grouping or pool between DPGR and non-DPGR using a reasonable method based on all the facts and circumstances. Whether a method of allocating COGS between DPGR and non-DPGR is reasonable must be determined in accordance with paragraph (b)(2) of this section. In addition, this paragraph (b)(5) provides methods that a Specified Cooperative may use to allocate COGS for a Specified Cooperative's inventories accounted for using the LIFO method. If the Specified Cooperative uses the LIFO/FIFO ratio method provided in paragraph (b)(5)(ii) of this section or the change in relative base-year cost method provided in paragraph (b)(5)(iii) of this section, then the Specified Cooperative must use that method for all of the Specified Cooperative's inventory accounted for under the LIFO method. The chosen reasonable method must be consistently applied from one taxable year to another and must clearly reflect the inventory method. The method must also be reasonable based on all the facts and circumstances. The books and records maintained for the inventory

method must be consistent with any allocations under this paragraph (b)(5).

(ii) *LIFO/FIFO ratio method.* The LIFO/FIFO ratio method is applied with respect to the LIFO inventory on a grouping-by-grouping or pool-by-pool basis. Under the LIFO/FIFO ratio method, a Specified Cooperative computes the COGS of a grouping or pool allocable to DPGR by multiplying the COGS of agricultural or horticultural products (defined in § 1.199A–8(a)(4)) in the grouping or pool that produced DPGR computed using the FIFO method by the LIFO/FIFO ratio of the grouping or pool. The LIFO/FIFO ratio of a grouping or pool is equal to the total COGS of the grouping or pool computed using the LIFO method over the total COGS of the grouping or pool computed using the FIFO method.

(iii) *Change in relative base-year cost method.* A Specified Cooperative using the dollar-value LIFO method may use the change in relative base-year cost method. The change in relative base-year cost method for a Specified Cooperative using the dollar-value LIFO method is applied to all LIFO inventory on a pool-by-pool basis. The change in relative base-year cost method determines the COGS allocable to DPGR by increasing or decreasing the total production costs (section 471 costs and additional section 263A costs) of agricultural or horticultural products that generate DPGR by a portion of any increment or liquidation of the dollar-value pool. The portion of an increment or liquidation allocable to DPGR is determined by multiplying the LIFO value of the increment or liquidation (expressed as a positive number) by the ratio of the change in total base-year cost (expressed as a positive number) of agricultural or horticultural products that will generate DPGR in ending inventory to the change in total base-year cost (expressed as a positive number) of all goods in ending inventory. The portion of an increment or liquidation allocable to DPGR may be zero but cannot exceed the amount of the increment or liquidation. Thus, a ratio in excess of 1.0 must be treated as 1.0.

(6) *Specified Cooperative using a simplified method for additional section 263A costs to ending inventory.* A Specified Cooperative that uses a simplified method specifically described in the section 263A regulations to allocate additional section 263A costs to ending inventory must follow the rules in paragraph (b)(2) of this section to determine the amount of additional section 263A costs allocable to DPGR. Allocable additional section 263A costs include additional section 263A costs included in the Specified Cooperative's beginning inventory as well as additional section 263A costs incurred during the taxable year by the Specified Cooperative. Ordinarily, if the Specified Cooperative uses a simplified method specifically described in the section 263A regulations to allocate its additional section 263A costs to its ending inventory, the additional section 263A costs must be allocated in the same proportion as section 471 costs are allocated.

(c) *Other deductions properly allocable to DPGR or gross income attributable to DPGR*—(1) *In general.* In determining its QPAI, the Specified Cooperative must subtract from its DPGR (in addition to the COGS), the deductions that are properly allocable and apportioned to DPGR. A Specified Cooperative generally must allocate and apportion these deductions using the rules of the section 861 method provided in paragraph (d) of this section. In lieu of the section 861 method, an eligible Specified Cooperative may apportion these deductions using the simplified deduction method provided in paragraph (e) of this section. Paragraph (f) of this section provides a small business simplified overall method that may be used by a qualifying small Specified Cooperative. A Specified Cooperative using the simplified deduction method or the small business simplified overall method must use that method for all deductions. A Specified Cooperative eligible to use the small business simplified overall method may choose at any time for any taxable year to use the small business simplified overall method or the simplified deduction method for a taxable year.

(2) *Treatment of net operating losses.* A deduction under section 172 for a net operating loss (NOL) is not allocated or apportioned to DPGR or gross income attributable to DPGR.

(3) *W–2 wages.* Although only W–2 wages as described in § 1.199A–11 are taken into account in computing the W–2 wage limitation, all wages paid (or incurred in the case of an accrual method taxpayer) in the taxable year are taken into account in computing QPAI for that taxable year.

(d) *Section 861 method.* Under the section 861 method, the Specified Cooperative must allocate and apportion its deductions using the allocation and apportionment rules provided under the section 861 regulations under which section 199A(g) is treated as an operative section described in § 1.861–8(f). Accordingly, the Specified Cooperative applies the rules of the section 861 regulations to allocate and apportion deductions (including, if applicable, its distributive share of deductions from passthrough entities) to gross income attributable to DPGR. If the Specified Cooperative applies the allocation and apportionment rules of the section 861 regulations for section 199A(g) and another operative section, then the Specified Cooperative must use the same method of allocation and the same principles of apportionment for purposes of all operative sections. Research and experimental expenditures must be allocated and apportioned in accordance with § 1.861–17 without taking into account the exclusive apportionment rule of § 1.861–17(b). Deductions for charitable contributions (as allowed under section 170 and section 873(b)(2) or 882(c)(1)(B)) must be ratably apportioned between gross income attributable to DPGR and gross income attributable to non-DPGR based on the relative amounts of gross income.

(e) *Simplified deduction method*—(1) *In general.* An eligible Specified Cooperative (defined in paragraph (e)(2) of this section) may use the simplified deduction method to apportion business deductions between DPGR and non-DPGR. The simplified deduction method does not apply to COGS. Under the simplified deduction method, the business deductions (except the NOL deduction) are ratably apportioned between DPGR and non-DPGR based on relative gross receipts. Accordingly, the amount of deductions for the current taxable year apportioned to DPGR is equal to the proportion of the total business deductions for the current taxable year that the amount of DPGR bears to total gross receipts.

(2) *Eligible Specified Cooperative.* For purposes of this paragraph (e), an eligible Specified Cooperative is—

(i) A Specified Cooperative that has average annual total gross receipts (as defined in paragraph (g) of this section) of $100,000,000 or less; or

(ii) A Specified Cooperative that has total assets (as defined in paragraph (e)(3) of this section) of $10,000,000 or less.

(3) *Total assets.*—(i) *In general.* For purposes of the simplified deduction method, total assets mean the total assets the Specified Cooperative has at the end of the taxable year.

(ii) *Members of an expanded affiliated group.* To compute the total assets of an *expanded affiliated group* (EAG) at the end of the taxable year, the total assets at the end of the taxable year of each member of the EAG at the end of the taxable year that ends with or within the taxable year of the computing member

(as described in § 1.199A–12(g)) are aggregated.

(4) *Members of an expanded affiliated group*—(i) *In general.* Whether the members of an EAG may use the simplified deduction method is determined by reference to all the members of the EAG. If the average annual gross receipts of the EAG are less than or equal to $100,000,000 or the total assets of the EAG are less than or equal to $10,000,000, then each member of the EAG may individually determine whether to use the simplified deduction method, regardless of the cost allocation method used by the other members.

(ii) *Exception.* Notwithstanding paragraph (e)(4)(i) of this section, all members of the same consolidated group must use the same cost allocation method.

(f) *Small business simplified overall method*—(1) *In general.* A qualifying small Specified Cooperative may use the small business simplified overall method to apportion COGS and deductions between DPGR and non-DPGR. Under the small business simplified overall method, a Specified Cooperative's total costs for the current taxable year (as defined in paragraph (f)(3) of this section) are apportioned between DPGR and non-DPGR based on relative gross receipts. Accordingly, the amount of total costs for the current taxable year apportioned to DPGR is equal to the proportion of total costs for the current taxable year that the amount of DPGR bears to total gross receipts.

(2) *Qualifying small Specified Cooperative.* For purposes of this paragraph (f), a qualifying small Specified Cooperative is a Specified Cooperative that has average annual total gross receipts (as defined in paragraph (g) of this section) of $25,000,000 or less.

(3) *Total costs for the current taxable year.* For purposes of the small business simplified overall method, total costs for the current taxable year means the total COGS and deductions for the current taxable year. Total costs for the current taxable year are determined under the methods of accounting that the Specified Cooperative uses to compute taxable income.

(4) *Members of an expanded affiliated group*—(i) *In general.* Whether the members of an EAG may use the small business simplified overall method is determined by reference to all the members of the EAG. If the average annual gross receipts of the EAG are less than or equal to $25,000,000 then each member of the EAG may individually determine whether to use the small business simplified overall method, regardless of the cost allocation method used by the other members.

(ii) *Exception.* Notwithstanding paragraph (f)(4)(i) of this section, all members of the same consolidated group must use the same cost allocation method.

(g) *Average annual gross receipts*—(1) *In general.* For purposes of the simplified deduction method and the small business simplified overall method, average annual gross receipts means the average annual gross receipts of the Specified Cooperative for the 3 taxable years (or, if fewer, the taxable years during which the taxpayer was in existence) preceding the current taxable year, even if one or more of such taxable years began before the effective date of section 199A(g). In the case of any taxable year of less than 12 months (a short taxable year), the gross receipts of the Specified Cooperative are annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period.

(2) *Members of an expanded affiliated group*—(i) *In general.* To compute the average annual gross receipts of an EAG, the gross receipts for the entire taxable year of each member that is a member of the EAG at the end of its taxable year that ends with or within the taxable year are aggregated. For purposes of this paragraph (g)(2), a consolidated group is treated as one member of an EAG.

(ii) *Exception.* Notwithstanding paragraph (g)(1)(i) of this section, all members of the same consolidated group must use the same cost allocation method.

(h) *Cost allocation methods for determining oil-related QPAI*—(1) *Section 861 method.* A Specified Cooperative that uses the section 861 method to determine deductions that are allocated and apportioned to gross income attributable to DPGR must use the section 861 method to determine deductions that are allocated and apportioned to gross income attributable to oil-related DPGR.

(2) *Simplified deduction method.* A Specified Cooperative that uses the simplified deduction method to apportion deductions between DPGR and non-DPGR must determine the portion of deductions allocable to oil-related DPGR by multiplying the deductions allocable to DPGR by the ratio of oil-related DPGR to DPGR from all activities.

(3) *Small business simplified overall method.* A Specified Cooperative that uses the small business simplified overall method to apportion total costs (COGS and deductions) between DPGR and non-DPGR must determine the portion of total costs allocable to oil-related DPGR by multiplying the total costs allocable to DPGR by the ratio of oil-related DPGR to DPGR from all activities.

(i) *Applicability date.* The provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. Taxpayers, however, may rely on these regulations until that date, but only if the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.199A–11 Wage limitation for the section 199A(g) deduction.

(a) *Rules of application*—(1) *In general.* The provisions of this section apply solely for purposes of section 199A(g) of the Internal Revenue Code (Code). The provisions of this section provide guidance on determining the W–2 wage limitation as defined in § 1.199A–8(b)(5)(ii)(B). Except as provided in paragraph (d)(2) of this section, the Form W–2, Wage and Tax Statement, or any subsequent form or document used in determining the amount of W–2 wages, are those issued for the calendar year ending during the taxable year of the Specified Cooperative (defined in § 1.199A–8(a)(2)) for wages paid to employees (or former employees) of the Specified Cooperative for employment by the Specified Cooperative. Employees are limited to employees defined in section 3121(d)(1) and (2) (that is, officers of a corporate taxpayer and employees of the taxpayer under the common law rules). See paragraph (a)(5) of this section for the requirement that W–2 wages must have been included in a return filed with the Social Security Administration (SSA) within 60 days after the due date (including extensions) of the return. *See also* section 199A(a)(4)(C).

(2) *Wage limitation for section 199A(g) deduction.* The amount of the deduction allowable under section 199A(g) to the Specified Cooperative for any taxable year cannot exceed 50 percent of the W–2 wages (as defined in section 199A(g)(1)(B)(ii) and paragraph (b) of this section) for the taxable year that are attributable to domestic production gross receipts (DPGR), defined in § 1.199A–8(b)(3)(ii), of agricultural or horticultural products defined in § 1.199A–8(a)(4).

(3) *Wages paid by entity other than common law employer.* In determining W–2 wages, the Specified Cooperative may take into account any W–2 wages paid by another entity and reported by the other entity on Forms W–2 with the other entity as the employer listed in

Box c of the Forms W–2, provided that the W–2 wages were paid to common law employees or officers of the Specified Cooperative for employment by the Specified Cooperative. In such cases, the entity paying the W–2 wages and reporting the W–2 wages on Forms W–2 is precluded from taking into account such wages for purposes of determining W–2 wages with respect to that entity. For purposes of this paragraph (a)(4), entities that pay and report W–2 wages on behalf of or with respect to other taxpayers can include, but are not limited to, certified professional employer organizations under section 7705, statutory employers under section 3401(d)(1), and agents under section 3504.

(4) *Requirement that wages must be reported on return filed with the Social Security Administration*—(i) *In general.* Pursuant to section 199A(g)(1)(B)(ii) and section 199A(b)(4)(C), the term W–2 wages does not include any amount that is not properly included in a return filed with SSA on or before the 60th day after the due date (including extensions) for such return. Under § 31.6051–2 of this chapter, each Form W–2 and the transmittal Form W–3, Transmittal of Wage and Tax Statements, together constitute an information return to be filed with SSA. Similarly, each Form W–2c, Corrected Wage and Tax Statement, and the transmittal Form W–3 or W–3c, Transmittal of Corrected Wage and Tax Statements, together constitute an information return to be filed with SSA. In determining whether any amount has been properly included in a return filed with SSA on or before the 60th day after the due date (including extensions) for such return, each Form W–2 together with its accompanying Form W–3 is considered a separate information return and each Form W–2c together with its accompanying Form W–3 or Form W–3c is considered a separate information return. Section 6071(c) provides that Forms W–2 and W–3 must be filed on or before January 31 of the year following the calendar year to which such returns relate (but see the special rule in § 31.6071(a)–1T(a)(3)(1) of this chapter for monthly returns filed under § 31.6011(a)–5(a) of this chapter). Corrected Forms W–2 are required to be filed with SSA on or before January 31 of the year following the year in which the correction is made.

(ii) *Corrected return filed to correct a return that was filed within 60 days of the due date.* If a corrected information return (Return B) is filed with SSA on or before the 60th day after the due date (including extensions) of Return B to correct an information return (Return A) that was filed with SSA on or before the 60th day after the due date (including extensions) of the information return (Return A) and paragraph (a)(5)(iii) of this section does not apply, then the wage information on Return B must be included in determining W–2 wages. If a corrected information return (Return D) is filed with SSA later than the 60th day after the due date (including extensions) of Return D to correct an information return (Return C) that was filed with SSA on or before the 60th day after the due date (including extensions) of the information return (Return C), then if Return D reports an increase (or increases) in wages included in determining W–2 wages from the wage amounts reported on Return C, such increase (or increases) on Return D is disregarded in determining W–2 wages (and only the wage amounts on Return C may be included in determining W–2 wages). If Return D reports a decrease (or decreases) in wages included in determining W–2 wages from the amounts reported on Return C, then, in determining W–2 wages, the wages reported on Return C must be reduced by the decrease (or decreases) reflected on Return D.

(iii) *Corrected return filed to correct a return that was filed later than 60 days after the due date.* If an information return (Return F) is filed to correct an information return (Return E) that was not filed with SSA on or before the 60th day after the due date (including extensions) of Return E, then Return F (and any subsequent information returns filed with respect to Return E) will not be considered filed on or before the 60th day after the due date (including extensions) of Return F (or the subsequent corrected information return). Thus, if a Form W–2c is filed to correct a Form W–2 that was not filed with SSA on or before the 60th day after the due date (including extensions) of the Form W–2 (or to correct a Form W–2c relating to a Form W–2 that had not been filed with SSA on or before the 60th day after the due date (including extensions) of the Form W–2), then this Form W–2c is not to be considered to have been filed with SSA on or before the 60th day after the due date (including extensions) for this Form W–2c, regardless of when the Form W–2c is filed.

(b) *Definition of W–2 wages*—(1) *In general.* Section 199A(g)(1)(B)(ii) provides that the W–2 wages of the Specified Cooperative must be determined in the same manner as under section 199A(b)(4) (without regard to section 199A(b)(4)(B) and after application of section 199A(b)(5)). Section 199A(b)(4)(A) provides that the term W–2 wages means with respect to any person for any taxable year of such person, the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Thus, the term W–2 wages includes the total amount of wages as defined in section 3401(a); the total amount of elective deferrals (within the meaning of section 402(g)(3)); the compensation deferred under section 457; and the amount of designated Roth contributions (as defined in section 402A).

(2) *Section 199A(g) deduction.* Pursuant to section 199A(g)(3)(A), W–2 wages do not include any amount which is not properly allocable to DPGR for purposes of calculating qualified production activities income (QPAI) as defined in § 1.199A–8(b)(4)(ii). The Specified Cooperative may determine the amount of wages that is properly allocable to DPGR using a reasonable method based on all the facts and circumstances. The chosen reasonable method must be consistently applied from one taxable year to another and must clearly reflect the wages allocable to DPGR for purposes of QPAI. The books and records maintained for wages allocable to DPGR for purposes of QPAI must be consistent with any allocations under this paragraph (b)(2).

(c) *Methods for calculating W–2 wages.* The Secretary may provide for methods to be used in calculating W–2 wages, including W–2 wages for short taxable years by publication in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(b) of this chapter).

(d) *Wage limitation—acquisitions, dispositions, and short taxable years*—(1) *In general.* For purposes of computing the deduction under section 199A(g) of the Specified Cooperative, in the case of an acquisition or disposition (as defined in section 199A(b)(5) and paragraph (d)(3) of this section) that causes more than one Specified Cooperative to be an employer of the employees of the acquired or disposed of Specified Cooperative during the calendar year, the W–2 wages of the Specified Cooperative for the calendar year of the acquisition or disposition are allocated between or among each Specified Cooperative based on the period during which the employees of the acquired or disposed of Specified Cooperatives were employed by the Specified Cooperative, regardless of which permissible method is used for reporting predecessor and successor wages on Form W–2, Wage and Tax Statement.

(2) *Short taxable year that does not include December 31.* If the Specified Cooperative has a short taxable year that does not contain a calendar year ending during such short taxable year, wages paid to employees for employment by the Specified Cooperative during the short taxable year are treated as W–2 wages for such short taxable year for purposes of paragraph (a) of this section (if the wages would otherwise meet the requirements to be W–2 wages under this section but for the requirement that a calendar year must end during the short taxable year).

(3) *Acquisition or disposition.* For purposes of paragraph (d)(1) and (2) of this section, the terms *acquisition* and *disposition* include an incorporation, a liquidation, a reorganization, or a purchase or sale of assets.

(e) *Application in the case of a Specified Cooperative with a short taxable year.* In the case of a Specified Cooperative with a short taxable year, subject to the rules of paragraph (a) of this section, the W–2 wages of the Specified Cooperative for the short taxable year can include only those wages paid during the short taxable year to employees of the Specified Cooperative, only those elective deferrals (within the meaning of section 402(g)(3)) made during the short taxable year by employees of the Specified Cooperative, and only compensation actually deferred under section 457 during the short taxable year with respect to employees of the Specified Cooperative.

(f) *Non-duplication rule.* Amounts that are treated as W–2 wages for a taxable year under any method cannot be treated as W–2 wages of any other taxable year. Also, an amount cannot be treated as W–2 wages by more than one taxpayer. Finally, an amount cannot be treated as W–2 wages by the Specified Cooperative both in determining patronage and nonpatronage W–2 wages.

(g) *Wage expense safe harbor*—(1) *In general.* A Specified Cooperative using either the section 861 method of cost allocation under § 1.199A–10(d) or the simplified deduction method under § 1.199A–10(e) may determine the amount of W–2 wages that are properly allocable to DPGR for a taxable year by multiplying the amount of W–2 wages determined under paragraph (b)(1) of this section for the taxable year by the ratio of the Specified Cooperative's wage expense included in calculating QPAI for the taxable year to the Specified Cooperative's total wage expense used in calculating the Specified Cooperative's taxable income for the taxable year, without regard to any wage expense disallowed by section 465, 469, 704(d), or 1366(d). A Specified Cooperative that uses either the section 861 method of cost allocation or the simplified deduction method to determine QPAI must use the same expense allocation and apportionment methods that it uses to determine QPAI to allocate and apportion wage expense for purposes of this safe harbor. For purposes of this paragraph (g)(1), the term wage expense means wages (that is, compensation paid by the employer in the active conduct of a trade or business to its employees) that are properly taken into account under the Specified Cooperative's method of accounting.

(2) *Wage expense included in cost of goods sold.* For purposes of paragraph (g)(1) of this section, a Specified Cooperative may determine its wage expense included in cost of goods sold (COGS) using a reasonable method based on all the facts and circumstances, such as using the amount of direct labor included in COGS or using section 263A labor costs (as defined in § 1.263A–1(h)(4)(ii)) included in COGS. The chosen reasonable method must be consistently applied from one taxable year to another and must clearly reflect the portion of wage expense included in COGS. The method must also be reasonable based on all the facts and circumstances. The books and records maintained for wage expense included in COGS must be consistent with any allocations under this paragraph (g)(2).

(3) *Small business simplified overall method safe harbor.* The Specified Cooperative that uses the small business simplified overall method under § 1.199A–10(f) may use the small business simplified overall method safe harbor for determining the amount of W–2 wages determined under paragraph (b)(1) of this section that is properly allocable to DPGR. Under this safe harbor, the amount of W–2 wages determined under paragraph (b)(1) of this section that is properly allocable to DPGR is equal to the same proportion of W–2 wages determined under paragraph (b)(1) of this section that the amount of DPGR bears to the Specified Cooperative's total gross receipts.

(h) *Applicability date.* The provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. Taxpayers, however, may rely on these regulations until that date, but only if the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.199A–12 Expanded affiliated groups.

(a) *In general.* The provisions of this section apply solely for purposes of section 199A(g) of the Internal Revenue Code (Code). Except as otherwise provided in the Code or regulations issued under the relevant section of the Code (for example, sections 199A(g)(3)(D)(ii) and 267, § 1.199A–8(c), paragraph (a)(3) of this section, and the consolidated return regulations under section 1502, each Specified Cooperative whether exempt or nonexempt (as defined in § 1.199A–8(a)(2)(iii)) that is a member of an expanded affiliated group (EAG) (defined in paragraph (a)(1) of this section) computes its own taxable income or loss, qualified production activities income (QPAI) (defined in § 1.199A–8(b)(4)(ii)), and W–2 wages (defined in § 1.199A–11(b)). If a Specified Cooperative is also a member of a consolidated group, see paragraph (d) of this section.

(1) *Definition of an expanded affiliated group.* An EAG is an affiliated group as defined in section 1504(a), determined by substituting ''more than 50 percent'' for ''at least 80 percent'' in each place it appears and without regard to section 1504(b)(2) and (4).

(2) *Identification of members of an expanded affiliated group*—(i) *In general.* Each Specified Cooperative must determine if it is a member of an EAG on a daily basis.

(ii) *Becoming or ceasing to be a member of an expanded affiliated group.* If a Specified Cooperative becomes or ceases to be a member of an EAG, the Specified Cooperative is treated as becoming or ceasing to be a member of the EAG at the end of the day on which its status as a member changes.

(3) *Attribution of activities*—(i) *In general.* Except as provided in paragraph (a)(3)(iv) of this section, if a Specified Cooperative that is a member of an EAG (disposing member) derives gross receipts (defined in § 1.199A–8(b)(2)(iii)) from the lease, rental, license, sale, exchange, or other disposition (defined in § 1.199A–9(j)) of agricultural or horticultural products (defined in § 1.199A–8(a)(4)) that were manufactured, produced, grown or extracted (MPGE) (as defined in § 1.199A–9(f)), in whole or significant part (as defined in § 1.199A–9(h)) in the United States (as defined in § 1.199A–9(i)) by another Specified Cooperative, then the disposing member is treated as conducting the previous activities conducted by such other Specified Cooperative with respect to the agricultural or horticultural products in determining whether its gross receipts

are domestic production gross receipts (DPGR) (defined in § 1.199A–8(b)(3)(ii)) if—

(A) Such property was MPGE by such other Specified Cooperative, and

(B) The disposing member is a member of the same EAG as such other Specified Cooperative at the time that the disposing member disposes of the agricultural or horticultural products.

(ii) *Date of disposition for leases, rentals, or licenses.* Except as provided in paragraph (a)(3)(iv) of this section, with respect to a lease, rental, or license, the disposing member described in paragraph (a)(3)(i) of this section is treated as having disposed of the agricultural or horticultural products on the date or dates on which it takes into account the gross receipts derived from the lease, rental, or license under its methods of accounting.

(iii) *Date of disposition for sales, exchanges, or other dispositions.* Except as provided in paragraph (a)(3)(iv) of this section, with respect to a sale, exchange, or other disposition, the disposing member is treated as having disposed of the agricultural or horticultural products on the date on which it ceases to own the agricultural or horticultural products for Federal income tax purposes, even if no gain or loss is taken into account.

(iv) *Exception. Nonexempt Specified Cooperatives.* A nonexempt Specified Cooperative is not attributed nonpatronage activities conducted by another Specified Cooperative. *See* § 1.199A–8(b)(2)(ii).

(4) *Marketing Specified Cooperatives.* A Specified Cooperative will be treated as having MPGE in whole or significant part any agricultural or horticultural product within the United States marketed by the Specified Cooperative which its patrons have so MPGE. Patrons are defined in § 1.1388–1(e).

(5) *Anti-avoidance rule.* If a transaction between members of an EAG is engaged in or structured with a principal purpose of qualifying for, or increasing the amount of, the section 199A(g) deduction of the EAG or the portion of the section 199A(g) deduction allocated to one or more members of the EAG, the Secretary may make adjustments to eliminate the effect of the transaction on the computation of the section 199A(g) deduction.

(b) *Computation of EAG's section 199A(g) deduction.*—(1) *In general.* The section 199A(g) deduction for an EAG is determined by separately computing the section 199A(g) deduction from the patronage sources of Specified Cooperatives that are members of the EAG and the section 199A(g) deduction from the nonpatronage sources of exempt Specified Cooperatives that are members of the EAG. The section 199A(g) deduction from patronage sources of Specified Cooperatives is determined by aggregating the income or loss, QPAI, and W–2 wages, if any, of each patronage source of a Specified Cooperative that is a member of the EAG (whether an exempt or nonexempt Specified Cooperative). The section 199A(g) deduction from nonpatronage sources of exempt Specified Cooperatives is determined by aggregating the income or loss, QPAI, and W–2 wages, if any, of each nonpatronage source of exempt Specified Cooperatives that are members of the EAG. For purposes of this determination, a member's QPAI may be positive or negative. A Specified Cooperative's taxable income or loss and QPAI will be determined by reference to the Specified Cooperative's method of accounting. For purposes of determining the section 199A(g) deduction for an EAG, taxable income or loss, QPAI, and W–2 wages of a nonexempt Specified Cooperative from nonpatronage sources are considered to be zero. *See* § 1.199A–8(b)(2)(ii).

(2) *Example.* The following examples illustrates the application of paragraph (b)(1) of this section.

(i) *Example.* Nonexempt Specified Cooperatives X, Y, and Z, calendar year taxpayers, are the only members of an EAG and are not members of a consolidated group. X's patronage source has taxable income of $50,000, QPAI of $15,000, and W–2 wages of $0. Y has patronage source taxable income of ($20,000), QPAI of ($1,000), and W–2 wages of $750. Z's patronage source has taxable income of $0, QPAI of $0, and W–2 wages of $3,000. In determining the EAG's section 199A(g) deduction, the EAG aggregates each member's patronage source's taxable income or loss, QPAI, and W–2 wages. Thus, the EAG's patronage source has taxable income of $30,000, the sum of X's patronage source taxable income of $50,000, Y's patronage source taxable income of ($20,000), and Z's patronage source taxable income of $0. The EAG has QPAI of $14,000, the sum of X's QPAI of $15,000, Y's QPAI of ($1,000), and Z's QPAI of $0. The EAG has W–2 wages of $3,750, the sum of X's W–2 wages of $0, Y's W–2 wages of $750, and Z's W–2 wages of $3,000. Accordingly, the EAG's section 199A(g) deduction equals $1,260, 9% of $14,000, the lesser of the QPAI and patronage source taxable income, but not greater than $1,875, 50% of its W–2 wages of $3,750. This result would be the same if X had a nonpatronage source income or loss, because nonpatronage source income of a nonexempt Specified Cooperative is not taken into account in determining the section 199A(g) deduction.

(3) *Net operating loss carryovers/carrybacks.* In determining the taxable income of an EAG, if a Specified Cooperative has a net operating loss (NOL) from its patronage sources that may be carried over or carried back, if applicable, (in accordance with section 172), to the taxable year, then for purposes of determining the taxable income of the Specified Cooperative, the amount of the NOL used to offset taxable income cannot exceed the taxable income of the patronage source of that Specified Cooperative. Similarly, if a Specified Cooperative has an NOL from its nonpatronage sources that may be carried over to the taxable year, then for purposes of determining the taxable income of the Specified Cooperative, the amount of the NOL used to offset taxable income cannot exceed the taxable income of the nonpatronage sources of that Specified Cooperative.

(4) *Losses used to reduce taxable income of an expanded affiliated group.* The amount of an NOL sustained by a Specified Cooperative member of an EAG that is used in the year sustained in determining an EAG's taxable income limitation under § 1.199A–8(b)(5)(ii)(C) (for nonexempt Specified Cooperatives) or § 1.199A–8(c)(4)(i) (for exempt Specified Cooperatives), as applicable, is not treated as an NOL carryover to any taxable year in determining the taxable income limitation under § 1.199A–8(b)(5)(ii)(C) or § 1.199A–8(c)(4)(i), as applicable. For purposes of this paragraph (b)(4), an NOL is considered to be used if it reduces an EAG's aggregate taxable income from patronage source or nonpatronage source, as the case may be, regardless of whether the use of the NOL actually reduces the amount of the section 199A(g) deduction that the EAG would otherwise derive. An NOL is not considered to be used to the extent that it reduces an EAG's aggregate taxable income from patronage source or nonpatronage source, as the case may be, to an amount less than zero. If more than one Specified Cooperative has an NOL used in the same taxable year to reduce the EAG's taxable income from patronage or nonpatronage sources, as the case may be, the respective NOLs are deemed used in proportion to the amount of each Specified Cooperative's NOL.

(5) *Example.* The following example illustrates the application of paragraph (b)(4) of this section.

(i) *Example*—(*A*) *Facts.* Nonexempt Specified Cooperatives A and B are the only two members of an EAG. A and B are both calendar year taxpayers and they do not join in the filing of a consolidated Federal income tax return. Neither A nor B had taxable income or loss prior to 2018. In 2018, A has patronage QPAI and taxable income of $1,000 and B has patronage QPAI of $1,000 and a

patronage NOL of $1,500. A also has nonpatronage income of $3,000. B has no activities other than from its patronage activities. In 2019, A has patronage QPAI of $2,000 and patronage taxable income of $1,000 and B has patronage QPAI of $2,000 and patronage taxable income prior to the NOL deduction allowed under section 172 of $2,000. Neither A nor B has nonpatronage activities in 2019. A's and B's patronage activities have aggregate W–2 wages in excess of the section 199A(g)(1)(B) wage limitation in both 2018 and 2019.

(*B*) *Section 199A(g) deduction for 2018.* In determining the EAG's section 199A(g) deduction for 2018, A's $1,000 of QPAI and B's $1,000 of QPAI are aggregated, as are A's $1,000 of taxable income from its patronage activities and B's $1,500 NOL from its patronage activities. A's nonpatronage income is not included. Thus, for 2018, the EAG has patronage QPAI of $2,000 and patronage taxable income of ($500). The EAG's section 199A(g) deduction for 2018 is 9% of the lesser of its patronage QPAI or its patronage taxable income. Because the EAG has a taxable loss from patronage sources in 2018, the EAG's section 199A(g) deduction is $0.

(*C*) *Section 199A(a) deduction for 2019.* In determining the EAG's section 199A deduction for 2019, A's patronage QPAI of $2,000 and B's patronage QPAI of $2,000 are aggregated, resulting in the EAG having patronage QPAI of $4,000. Also, $1,000 of B's patronage NOL from 2018 was used in 2018 to reduce the EAG's taxable income from patronage sources to $0. The remaining $500 of B's patronage NOL from 2018 is not considered to have been used in 2018 because it reduced the EAG's patronage taxable income to less than $0. Accordingly, for purposes of determining the EAG's taxable income limitation under § 1.199A–8(b)(5) in 2019, B is deemed to have only a $500 NOL carryover from its patronage sources from 2018 to offset a portion of its 2019 taxable income from its patronage sources. Thus, B's taxable income from its patronage sources in 2019 is $1,500, which is aggregated with A's $1,000 of taxable income from its patronage sources. The EAG's taxable income limitation in 2019 is $2,500. The EAG's section 199A(g) deduction is 9% of the lesser of its patronage sourced QPAI of $4,000 and its taxable income from patronage sources of $2,500. Thus, the EAG's section 199A(g) deduction in 2019 is 9% of $2,500, or $225. The results for 2019 would be the same if neither A nor B had patronage sourced QPAI in 2018.

(c) *Allocation of an expanded affiliated group's section 199A(g) deduction among members of the expanded affiliated group*—(1) *In general.* An EAG's section 199A(g) deduction from its patronage sources, as determined in paragraph (b) of this section, is allocated among the Specified Cooperatives that are members of the EAG in proportion to each Specified Cooperative's patronage QPAI, regardless of whether the Specified Cooperative has patronage taxable income or W–2 wages for the taxable year. An EAG's section 199A(g) deduction from its nonpatronage sources, as determined in paragraph (b) of this section, is allocated among the Specified Cooperatives that are members of the EAG in proportion to each Specified Cooperative's nonpatronage QPAI, regardless of whether the Specified Cooperative has nonpatronage taxable income or W–2 wages for the taxable year. For these purposes, if a Specified Cooperative has negative patronage or nonpatronage QPAI, such QPAI is treated as zero. Pursuant to § 1.199A–8(b)(6), a patronage section 199A(g) deduction can be applied only against patronage income and deductions. Pursuant to § 1.199A–8(c)(ii), a nonpatronage section 199A(g) deduction and can be applied only against nonpatronage income and deductions.

(2) *Use of section 199A(g) deduction to create or increase a net operating loss.* If a Specified Cooperative that is a member of an EAG has some or all of the EAG's section 199A(g) deduction allocated to it under paragraph (c)(1) of this section and the amount allocated exceeds patronage or nonpatronage taxable income, determined as described in this section and prior to allocation of the section 199A(g) deduction, the section 199A(g) deduction will create an NOL for the patronage source or nonpatronage source. Similarly, if a Specified Cooperative that is a member of an EAG, prior to the allocation of some or all of the EAG's section 199A(g) deduction to the member, has a patronage or nonpatronage NOL for the taxable year, the portion of the EAG's section 199A(g) deduction allocated to the member will increase such NOL.

(d) *Special rules for members of the same consolidated group*—(1) *Intercompany transactions.* In the case of an intercompany transaction between consolidated group members S and B (as the terms intercompany transaction, S and B are defined in § 1.1502–13(b)(1)), S takes the intercompany transaction into account in computing the section 199A(g) deduction at the same time and in the same proportion as S takes into account the income, gain, deduction, or loss from the intercompany transaction under § 1.1502–13.

(2) *Application of the simplified deduction method and the small business simplified overall method.* For purposes of applying the simplified deduction method under § 1.199A–10(e) and the small business simplified overall method under § 1.199A–10(f), a Specified Cooperative that is part of a consolidated group determines its QPAI using its members' DPGR, non-DPGR, cost of goods sold (COGS), and all other deductions, expenses, or losses (hereinafter deductions), determined after application of § 1.1502–13.

(3) *Determining the section 199A(g) deduction*—(i) *Expanded affiliated group consists of consolidated group and non-consolidated group members.* In determining the section 199A(g) deduction, if an EAG includes Specified Cooperatives that are members of the same consolidated group and Specified Cooperatives that are not members of the same consolidated group, the consolidated taxable income or loss, QPAI, and W–2 wages, from patronage sources, if any, of the consolidated group (and not the separate taxable income or loss, QPAI, and W–2 wages from patronage sources of the members of the consolidated group), are aggregated with the taxable income or loss, QPAI, and W–2 wages, from patronage sources, if any, of the non-consolidated group members. A similar rule applies with respect to nonpatronage taxable income or loss, QPAI, and W–2 wages. For example, if A, B, C, S1, and S2 are Specified Cooperatives that are members of the same EAG, and A, S1, and S2 are members of the same consolidated group (the A consolidated group), then the A consolidated group is treated as one member of the EAG. Accordingly, the EAG is considered to have three members, the A consolidated group, B, and C. The consolidated taxable income or loss, QPAI, and W–2 wages from patronage sources, if any, of the A consolidated group are aggregated with the taxable income or loss from patronage sources, QPAI, and W–2 wages, if any, of B and C in determining the EAG's section 199A(g) deduction from patronage sources. Similarly, the consolidated taxable income or loss, QPAI, and W–2 wages from nonpatronage sources, if any, of the A consolidated group are aggregated with the taxable income or loss from nonpatronage sources, QPAI, and W–2 wages, if any, of B and C in determining the EAG's section 199A(g) deduction from nonpatronage sources. Pursuant to § 1.199A–8(b)(6), a patronage section 199A(g) deduction can be applied only against patronage income and deductions. Pursuant to § 1.199A–8(c)(ii), a nonpatronage section 199A(g) deduction and can be applied only against nonpatronage income and deductions.

(ii) *Expanded affiliated group consists only of members of a single consolidated group.* If all of the Specified Cooperatives that are members of an EAG are also members of

the same consolidated group, the consolidated group's section 199A(g) deduction is determined using the consolidated group's consolidated taxable income or loss, QPAI, and W–2 wages, from patronage sources or nonpatronage sources, as the case may be, rather than the separate taxable income or loss, QPAI, and W–2 wages from patronage sources or nonpatronage sources of its members.

(4) *Allocation of the section 199A(g) deduction of a consolidated group among its members.* The section 199A(g) deduction from patronage sources of a consolidated group (or the section 199A(g) deduction allocated to a consolidated group that is a member of an EAG) is allocated among the patronage sources of Specified Cooperatives in proportion to each Specified Cooperative's patronage QPAI, regardless of whether the Specified Cooperative has patronage separate taxable income or W–2 wages for the taxable year. In allocating the section 199A(g) deduction of a patronage source of a Specified Cooperative that is part of a consolidated group among patronage sources of other members of the same group, any redetermination of a member's patronage receipts, COGS, or other deductions from an intercompany transaction under § 1.1502–13(c)(1)(i) or (c)(4) is not taken into account for purposes of section 199A(g). Also, for purposes of this allocation, if a patronage source of a Specified Cooperative that is a member of a consolidated group has negative QPAI, the QPAI of the patronage source is treated as zero.

(e) *Examples.* The following examples illustrate the application of paragraphs (a) through (d) of this section.

(i) *Example 1.* Specified Cooperatives X, Y, and Z are members of the same EAG but are not members of a consolidated group. X, Y, and Z each files Federal income tax returns on a calendar year basis. None of X, Y, or Z have activities other than from its patronage sources. Prior to 2018, X had no taxable income or loss. In 2018, X has taxable income of $0, QPAI of $2,000, and W–2 wages of $0, Y has taxable income of $4,000, QPAI of $3,000, and W–2 wages of $500, and Z has taxable income of $4,000, QPAI of $5,000, and W–2 wages of $2,500. Accordingly, the EAG's patronage source taxable income is $8,000, the sum of X's taxable income of $0, Y's taxable income of $4,000, and Z's taxable income of $4,000. The EAG has QPAI of $10,000, the sum of X's QPAI of $2,000, Y's QPAI of $3,000, and Z's QPAI of $5,000. The EAG's W–2 wages are $3,000, the sum of X's W–2 wages of $0, Y's W–2 wages of $500, and Z's W–2 wages of $2,500. Thus, the EAG's section 199A(g) deduction for 2018 is $720 (9% of the lesser of the EAG's patronage source taxable income of $8,000 and the EAG's QPAI of $10,000, but no greater than 50% of its W–2 wages of $3,000, *i.e.,* $1,500). Pursuant to paragraph (c)(1) of this section, the $720 section 199A(g) deduction is allocated to X, Y, and Z in proportion to their respective amounts of QPAI, that is $144 to X ($720 × $2,000/$10,000), $216 to Y ($720 × $3,000/$10,000), and $360 to Z ($720 × $5,000/$10,000). Although X's patronage source taxable income for 2018 determined prior to allocation of a portion of the EAG's section 199A(g) deduction to it was $0, pursuant to paragraph (c)(2) of this section, X will have an NOL from its patronage source for 2018 equal to $144, which will be a carryover to 2019.

(ii) *Example 2.* (A) *Facts.* Corporation X is the common parent of a consolidated group, consisting of X and Y, which has filed a consolidated Federal income tax return for many years. Corporation P is the common parent of a consolidated group, consisting of P and S, which has filed a consolidated Federal income tax return for many years. The X and P consolidated groups each file their consolidated Federal income tax returns on a calendar year basis. X, Y, P, and S are each Specified Cooperatives, and none of X, Y, P, or S has ever had activities other than from its patronage sources. The X consolidated group and the P consolidated group are members of the same EAG in 2019. In 2018, the X consolidated group incurred a consolidated net operating loss (CNOL) of $25,000. Neither P nor S (nor the P consolidated group) has ever incurred an NOL. In 2019, the X consolidated group has (prior to the deduction under section 172) taxable income of $8,000 and the P consolidated group has taxable income of $20,000. X's QPAI is $8,000, Y's QPAI is ($13,000), P's QPAI is $16,000 and S's QPAI is $4,000. There are sufficient W–2 wages to exceed the section 199A(g)(1)(B) limitation.

(B) *Analysis.* The X consolidated group uses $8,000 of its CNOL from 2018 to offset the X consolidated group's taxable income in 2019. None of the X consolidated group's remaining CNOL may be used to offset taxable income of the P consolidated group under paragraph (b)(3) of this section. Accordingly, for purposes of determining the EAG's section 199A(g) deduction for 2019, the EAG has taxable income of $20,000 (the X consolidated group's taxable income, after the deduction under section 172, of $0 plus the P consolidated group's taxable income of $20,000). The EAG has QPAI of $15,000 (the X consolidated group's QPAI of ($5,000) (X's $8,000 + Y's ($13,000)), and the P consolidated group's QPAI of $20,000 (P's $16,000 + S's $4,000)). The EAG's section 199A(g) deduction equals $1,350, 9% of the lesser of its taxable income of $20,000 and its QPAI of $15,000. The section 199A(g) deduction is allocated between the X and P consolidated groups in proportion to their respective QPAI. Because the X consolidated group has negative QPAI, all of the section 199A(g) deduction of $1,350 is allocated to the P consolidated group. This $1,350 is allocated between P and S, the members of the P consolidated group, in proportion to their QPAI. Accordingly, P is allocated $1,080 ($1,350 × ($16,000/$20,000) and S is allocated $270 ($1,350 × $4,000/$20,000)).

(f) *Allocation of patronage income and loss by a Specified Cooperative that is a member of the expanded affiliated group for only a portion of the year*—(1) *In general.* A Specified Cooperative that becomes or ceases to be a member of an EAG during its taxable year must allocate its taxable income or loss, QPAI, and W–2 wages between the portion of the taxable year that the Specified Cooperative is a member of the EAG and the portion of the taxable year that the Specified Cooperative is not a member of the EAG. This allocation of items is made by using the pro rata allocation method described in this paragraph (f)(1). Under the pro rata allocation method, an equal portion of patronage taxable income or loss, QPAI, and W–2 wages, and nonpatronage taxable income or loss, QPAI, and W–2 wages for the taxable year is assigned to each day of the Specified Cooperative's taxable year. Those items assigned to those days that the Specified Cooperative was a member of the EAG are then aggregated.

(2) *Coordination with rules relating to the allocation of income under § 1.1502–76(b).* If § 1.1502–76(b) (relating to items included in a consolidated return) applies to a Specified Cooperative that is a member of an EAG, then any allocation of items required under this paragraph (f) is made only after the allocation of the items pursuant to § 1.1502–76(b).

(g) *Total section 199A(g) deduction for a Specified Cooperative that is a member of an expanded affiliated group for some or all of its taxable year*—(1) *Member of the same EAG for the entire taxable year.* If a Specified Cooperative is a member of the same EAG for its entire taxable year, the Specified Cooperative's section 199A(g) deduction for the taxable year (whether patronage sourced or nonpatronage sourced) is the amount of the section 199A(g) deduction allocated to it by the EAG under paragraph (c)(1) of this section.

(2) *Member of the expanded affiliated group for a portion of the taxable year.* If a Specified Cooperative is a member of an EAG for only a portion of its taxable year and is either not a member of any EAG or is a member of another EAG, or both, for another portion of the taxable year, the Specified Cooperative's section 199A(g) deduction for the taxable year (whether patronage sourced or nonpatronage sourced) is the sum of its section 199A(g) deductions for each portion of the taxable year.

(3) *Example.* The following example illustrates the application of paragraphs (f) and (g) of this section.

(i) *Example*—(A) *Facts.* Specified Cooperatives X and Y, calendar year taxpayers, are members of the same EAG for the entire 2018 taxable year. Specified Cooperative Z, also a calendar year taxpayer, is a member of the EAG of which X and Y are members for the first half of 2018 and not a member of any EAG for the second half of 2018. Assume that X, Y, and Z each has W–2 wages in excess of the section 199A(g)(1)(B) wage limitation for all relevant periods. In 2018, X's patronage source has taxable income of $2,000 and QPAI of $600, Y's patronage source has a taxable loss of $400 and QPAI of ($200), and Z's patronage source has taxable income of $1,400 and QPAI of $2,400.

(B) *Analysis.* Pursuant to the pro rata allocation method, $700 of Z's 2018 patronage taxable income and $1,200 of its 2018 QPAI are allocated to the first half of the 2018 taxable year (the period in which Z is a member of the EAG) and $700 of Z's 2018 patronage taxable income and $1,200 of its 2018 QPAI are allocated to the second half of the 2018 taxable year (the period in which Z is not a member of any EAG). Accordingly, in 2018, the EAG has taxable income from patronage source of $2,300 (X's $2,000 + Y's ($400) + Z's $700) and QPAI of $1,600 (X's $600 + Y's ($200) + Z's $1,200). The EAG's section 199A(g) deduction for 2018 is $144 (9% of the lesser of the EAG's taxable income from patronage source of $2,300 or QPAI of $1,600). Pursuant to § 1.199A–14(c)(1), this $144 deduction is allocated to X's, Y's, and Z's patronage source in proportion to their respective QPAI. Accordingly, X's patronage source is allocated $48 of the EAG's section 199A(g) deduction ($144 × ($600/($600 + $0 + $1,200))), Y's patronage source is allocated $0 of the EAG's section 199A(g) deduction ($144 × ($0/($600 + $0 + $1,200))), and Z's patronage source is allocated $96 of the EAG's section 199A(g) deduction ($144 × ($1,200/($600 + $0 + $1,200))). For the second half of 2018, Z's patronage source has taxable income of $700 and QPAI of $1,200. Therefore, for the second half of 2018, Z's patronage source has a section 199A(g) deduction of $63 (9% of the lesser of its taxable income of $700 or its QPAI of $1,200 for the second half of 2018). Accordingly, X's 2018 section 199A(g) deduction is $48 and Y's 2018 section 199A(g) deduction is $0. Z's 2018 section 199A(g) deduction is $159, the sum of the $96 section 199A(g) deduction of the EAG allocated to Z for the first half of 2018 and Z's $63 section 199A(g) deduction for the second half of 2018.

(h) *Computation of section 199A(g) deduction for members of an expanded affiliated group with different taxable years*—(1) *In general.* If Specified Cooperatives that are members of an EAG have different taxable years, in determining the section 199A(g) deduction of a member (the computing member), the computing member is required to take into account the taxable income or loss, determined without regard to the section 199A(g) deduction, QPAI, and W–2 wages of each other group member that are both—

(i) Attributable to the period that each other member of the EAG and the computing member are members of the EAG; and

(ii) Taken into account in a taxable year that begins after the effective date of section 199A(g) and ends with or within the taxable year of the computing member with respect to which the section 199A(g) deduction is computed.

(2) *Example.* The following example illustrates the application of this paragraph (h).

(i) *Example.* (A) Specified Cooperatives X, Y, and Z are members of the same EAG. Neither X, Y, nor Z is a member of a consolidated group. X and Y are calendar year taxpayers and Z is a June 30 fiscal year taxpayer. Z came into existence on July 1, 2017. All of X, Y's, and Z's activities are patronage sourced. Each Specified Cooperative has taxable income that exceeds its QPAI and W–2 wages in excess of the section 199A(g)(1)(B) wage limitation. For the taxable year ending December 31, 2018, X's QPAI is $8,000 and Y's QPAI is ($6,000). For its taxable year ending June 30, 2019, Z's QPAI is $2,000.

(B) In computing X's and Y's respective section 199A(g) deductions for their taxable years ending December 31, 2018, X's taxable income or loss, QPAI and W–2 wages and Y's taxable income or loss, QPAI, and W–2 wages from their respective taxable years ending December 31, 2018, are aggregated. The EAG's QPAI for this purpose is $2,000 (X's QPAI of $8,000 + Y's QPAI of ($6,000)). The $180 deduction is allocated to each of X and Y in proportion to their respective QPAI as a percentage of the QPAI of each member of the EAG that was taken into account in computing the EAG's section 199A(g) deduction. Pursuant to paragraph (c)(1) of this section, in allocating the section 199A(g) deduction between X and Y, because Y's QPAI is negative, Y's QPAI is treated as being $0. Accordingly, X's section 199A(g) deduction for its taxable year ending December 31, 2018, is $180 ($180 × $8,000/($8,000 + $0)). Y's section 199A(g) deduction for its taxable year ending December 31, 2018, is $0 ($180 × $0/($8,000 + $0)).

(C) In computing Z's section 199A(g) deduction for its taxable year ending June 30, 2019, X's and Y's items from their respective taxable years ending December 31, 2018, are taken into account. Therefore, X's taxable income or loss and Y's taxable income or loss, determined without regard to the section 199A(g) deduction, QPAI, and W–2 wages from their taxable years ending December 31, 2018, are aggregated with Z's taxable income or loss, QPAI, and W–2 wages from its taxable year ending June 30, 2019. The EAG's QPAI is $4,000 (X's QPAI of $8,000 + Y's QPAI of ($6,000) + Z's QPAI of $2,000). The EAG's section 199A(g) deduction is $360 (9% × $4,000). A portion of the $360 deduction is allocated to Z in proportion to its QPAI as a percentage of the QPAI of each member of the EAG that was taken into account in computing the EAG's section 199A(g) deduction. Pursuant to paragraph (c)(1) of this section, in allocating a portion of the $360 deduction to Z, Y's QPAI is treated as being $0 because Y's QPAI is negative. Z's section 199A(g) deduction for its taxable year ending June 30, 2019, is $72 ($360 × ($2,000/($8,000 + $0 + $2,000))).

(i) *Partnership owned by expanded affiliated group*—(1) *In general.* For purposes of section 199A(g)(3)(D) relating to DPGR, if all of the interests in the capital and profits of a partnership are owned by members of a single EAG at all times during the taxable year of such partnership (EAG partnership), then the EAG partnership and all members of that EAG are treated as a single taxpayer during such period.

(2) *Attribution of activities*—(*i*) *In general.* If a Specified Cooperative which is a member of an EAG (disposing member) derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of property that was MPGE by an EAG partnership, all the partners of which are members of the same EAG to which the disposing member belongs at the time that the disposing member disposes of such property, then the disposing member is treated as conducting the MPGE activities previously conducted by the EAG partnership with respect to that property. The previous sentence applies only for those taxable years in which the disposing member is a member of the EAG of which all the partners of the EAG partnership are members for the entire taxable year of the EAG partnership. With respect to a lease, rental, or license, the disposing member is treated as having disposed of the property on the date or dates on which it takes into account its gross receipts from the lease, rental, or license under its method of accounting. With respect to a sale, exchange, or other disposition, the disposing member is treated as having disposed of the property on the date it ceases to own the property for Federal income tax purposes, even if no gain or loss is taken into account. Likewise, if an EAG partnership derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of property that was MPGE by a member (or members) of the same EAG (the producing member) to which all the partners of the EAG partnership belong at the time that the EAG partnership disposes of such property, then the EAG partnership is treated as conducting the MPGE activities previously conducted by the producing member with respect to that property. The previous sentence applies only for those taxable years in which the producing member is a member of the EAG of which all the partners of the EAG partnership are members for the

entire taxable year of the EAG partnership. With respect to a lease, rental, or license, the EAG partnership is treated as having disposed of the property on the date or dates on which it takes into account its gross receipts derived from the lease, rental, or license under its method of accounting. With respect to a sale, exchange, or other disposition, the EAG partnership is treated as having disposed of the property on the date it ceases to own the property for Federal income tax purposes, even if no gain or loss is taken into account.

(*ii*) *Attribution between expanded affiliated group partnerships.* If an EAG partnership (disposing partnership) derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of property that was MPGE by another EAG partnership (producing partnership), then the disposing partnership is treated as conducting the MPGE activities previously conducted by the producing partnership with respect to that property, provided that each of these partnerships (the producing partnership and the disposing partnership) is owned for its entire taxable year in which the disposing partnership disposes of such property by members of the same EAG. With respect to a lease, rental, or license, the disposing partnership is treated as having disposed of the property on the date or dates on which it takes into account its gross receipts from the lease, rental, or license under its method of accounting. With respect to a sale, exchange, or other disposition, the disposing partnership is treated as having disposed of the property on the date it ceases to own the property for Federal income tax purposes, even if no gain or loss is taken into account.

(*iii*) *Exception.* No member of an EAG other than an exempt Specified Cooperative is attributed nonpatronage activities conducted by an EAG partnership. An EAG partnership is not attributed nonpatronage activities conducted by any member of the EAG or by another EAG partnership.

(j) *Applicability date.* The provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. Taxpayers, however, may rely on these regulations until that date, but only if the taxpayers apply the rules in their entirety and in a consistent manner.

■ Par. 3. Section 1.1388–1 is amended by adding paragraphs (f) and (g).

The additions read as follows:

§ 1.1388–1 Definitions and special rules.

* * * * *

(f) *Patronage and nonpatronage.* Whether an item of income or deduction is patronage or nonpatronage sourced is determined by applying the directly related use test. The directly related use test provides that if the income or deduction is produced by a transaction that actually facilitates the accomplishment of the cooperative's marketing, purchasing, or services activities, the income or deduction is from patronage sources. However, if the transaction producing the income or deduction does not actually facilitate the accomplishment of these activities but merely enhances the overall profitability of the cooperative, being merely incidental to the association's cooperative operation, the income or deduction is from nonpatronage sources. Patronage and nonpatronage income or deductions cannot be netted unless otherwise permitted by the Internal Revenue Code or regulations issued under the relevant section of the Internal Revenue Code, or guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter).

(g) *Effective/applicability date.* The provisions of paragraph (f) of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. However, taxpayers may rely on the provisions of paragraph (f) of this section until the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–11501 Filed 6–18–19; 8:45 am]

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FEDERAL REGISTER

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Part IV

The President

Proclamation 9906—Father's Day, 2019

Executive Order 13875—Evaluating and Improving the Utility of Federal Advisory Committees

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Title 3—

The President

Proclamation 9906 of June 14, 2019

Father's Day, 2019

By the President of the United States of America

A Proclamation

On Father's Day, we celebrate and honor the men who have embraced the essential role of fatherhood. Through acts of selflessness, determination, and love, fathers and father figures enrich and bless all of our lives. Today, we thank them for boldly embracing the tremendous responsibility of raising our Nation's children to be happy, productive, and responsible adults, and for their ceaseless devotion to their families.

As children, we take comfort in the presence and companionship of fathers, and we are strengthened by their encouragement as we prepare to confront future challenges. Throughout life, we draw courage from our father's firm and loving guidance and example. With the values they instill in us, they encourage us to live a life of virtue and exercise good judgment as we enter into adulthood and have families of our own.

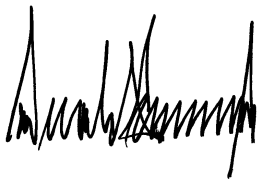
Children of all ages benefit in countless ways from a father's ongoing presence and involvement. A father's time, attention, and mentorship are crucial to the physical, emotional, and spiritual growth of his child. Our Nation heralds the dignity of fatherhood, a father's role in developing children's character, and the indispensable influence fathers have on their children and our communities.

Increasingly, research has shown that children with involved fathers are more likely to have healthy self-esteem, do well in school, and make higher salaries as adults. This is one reason why my Administration is committed to promoting the role of fathers and father figures in ensuring the growth, development, and well-being of America's youth. We support the continuance of grant funding to organizations across our country that promote responsible fatherhood by helping fathers to strengthen their relationships with their children and to seek and retain gainful employment to provide a stable home life for their families.

On this day, we thank all amazing fathers for their unending dedication and leadership. They impact countless lives in such important and powerful ways. We express our heartfelt love and appreciation to fathers, whether their children are by birth, adoption, or foster care, for the many sacrifices they have made to ensure that their children have every opportunity to reach their full potential in life.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 16, 2019, as Father's Day. I call on United States Government officials to display the flag of the United States on all Government buildings on Father's Day and invite State and local governments and the people of the United States to observe Father's Day with appropriate ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–13173
Filed 6–18–19; 11:15 am]
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Presidential Documents

Executive Order 13875 of June 14, 2019

Evaluating and Improving the Utility of Federal Advisory Committees

By the authority vested in me as President by the Constitution and the laws of the United States of America, and consistent with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. *Review of Current Advisory Committees.* (a) Each executive department and agency (agency) shall evaluate the need for each of its current advisory committees established under section 9(a)(2) of FACA and those advisory committees established under section 9(a)(1) that are authorized by law but not required by statute (eligible committees).

(b) Each agency shall, by September 30, 2019, terminate at least one-third of its current committees established under section 9(a)(2) of FACA, including committees for which the:

(i) stated objectives of the committee have been accomplished;

(ii) subject matter or work of the committee has become obsolete;

(iii) primary functions have been assumed by another entity; or

(iv) agency determines that the cost of operation is excessive in relation to the benefits to the Federal Government.

(c) Each agency may request a waiver of the requirement in subsection (b) of this section from the Director of the Office of Management and Budget (Director). The Director may grant such a waiver if the Director concludes it is necessary for the delivery of essential services, for effective program delivery, or because it is otherwise warranted by the public interest.

(d) Each agency that has fewer than three current eligible committees is exempt from subsection (b) of this section.

(e) Agencies may count eligible committees terminated since January 20, 2017, toward the requirement of subsection (b) of this section.

Sec. 2. *Limitations on New Advisory Committees.* The Government-wide combined total number of eligible committees (excluding committees covered by section 6(d) of this order) shall not exceed 350. If the combined total number of eligible committees exceeds 350, an agency may not establish a new advisory committee under section 9(a)(2) of FACA, unless the agency obtains a waiver pursuant to subsection 4(b) of this order. Such a waiver is in addition to the notice and other requirements of FACA and its implementing regulations.

Sec. 3. *Reporting Requirements.* (a) The head of each agency shall submit to the Director on or before August 1, 2019:

(i) a recommendation for each of the agency's current advisory committees established by the President under section 9(a)(1) of FACA regarding whether the committee should be continued; and

(ii) a detailed plan, for each advisory committee required by statute, for continuing or terminating such committee, including, as appropriate, recommended legislation for submission to the Congress.

(b) The Administrator of General Services (Administrator) shall submit to the Director such justifications and recommendations required by subsection (a) of this section for independent Presidential advisory committees, as defined by 41 CFR 102–3.25.

Sec. 4. *Office of Management and Budget Role.* (a) The Director, in coordination with the Administrator, shall issue instructions regarding the implementation of this order, including how to calculate the number of eligible committees to eliminate in each agency and how to comply with applicable law.

(b) The Director may, with the concurrence of the Administrator, grant an agency a waiver of the requirements of section 2 of this order if the Director concludes that such waiver is necessary for the delivery of essential services, for effective program delivery, or because it is otherwise warranted by the public interest.

(c) By September 1, 2019, the Director shall make appropriate recommendations to the President about terminating committees established by the President under section 9(a)(1) of FACA. The Director shall also include in the President's FY 2021 budget submission to the Congress a detailed plan for terminating such committees required by statute whose continued operations no longer serve the public interest, including with respect to the criteria set forth in subsection 1(b) of this order.

Sec. 5. *Exemption for Merit Review Panels.* (a) The requirements of sections 1, 2, and 3 of this order do not apply to a merit review panel or advisory committee whose primary purpose is to provide scientific expertise to support agencies making decisions related to the safety or efficacy of products to be marketed to American consumers.

(b) A merit review panel, for purposes of this order, is any collegial body whose approval is necessary to fund an extramural research procurement contract, grant, or cooperative agreement (including second level peer review), such as those at the National Institutes of Health.

Sec. 6. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

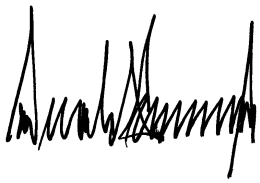
(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The provisions of this order do not apply to any independent regulatory agency, as that term is defined in section 3502(5) of title 44, United States Code.



THE WHITE HOUSE,
June 14, 2019.

[FR Doc. 2019–13175
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